

Craig R Joel

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# **Party, Politics and Penalism 1836 - 1845**

*An analysis of the role of John Montagu  
in the penal politics of Van Diemen's  
Land*

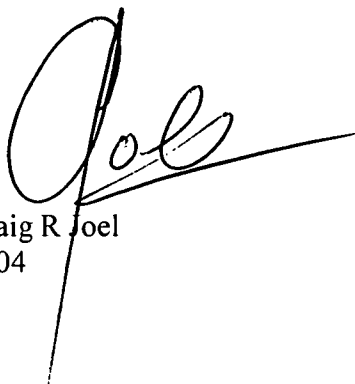
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2004

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This thesis contains no material which has been accepted for the award of any degree or diploma in any university, and that, to the best of my knowledge and belief, the thesis contains no copy or paraphrase of material previously published or written by another person, except where reference is made in the text of the thesis.

A handwritten signature in black ink, appearing to read 'Joel', with a long horizontal line extending from the end of the signature.

Craig R. Joel  
2004

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## Abstract

When Sir John Franklin, polar hero and explorer, succeeded George Arthur as governor of Van Diemen's Land in January 1837, there was an expectation among some of the colonists that the old, autocratic bureaucracy would be broken up and replaced by a more liberal regime. Van Diemen's Land was still a great open air prison, of whom 17,593 souls out of a total population of 42,795, including the military and aboriginals, were convicts. Most of the convicts were employed in private or assigned service, building houses, fences and roads, and generally increasing the value of the colony's holdings. Consequently, the success of the convict system and the safety of the colony's free inhabitants depended on the sometimes invasive vigilance and industry of the government, and it was partly this policy which made Arthur and his officials unpopular in the colony. Subsequently, some colonists, who did not directly benefit from the labour of the convicts, demanded the introduction of representative government, and the gradual abolition of convict transportation altogether. Franklin however was inexperienced in penal and colonial affairs, and naturally enough, he could not 'easily evade' the advice of Arthur's close officials, or the "faction" as they were known by their critics. A 'change of men and measures' however was not forthcoming, and Franklin placed almost unlimited confidence in his predecessor's favourites to administer the penal establishment. Meanwhile, Franklin's attention was averted to the progressing of civil reforms in the convict colony, and was distracted by matters which were not of primary interest to the "faction". Indeed, by the end of Franklin's first year in government, John Montagu, the Colonial Secretary, wrote to Arthur that 'the high qualities which were so conspicuous in Sir John... at the North Pole have not accompanied him to the South'.

Franklin's troubles with the "faction" were exacerbated by the introduction of the vast new 'separate' or probation system of convict punishment and reform in Van Diemen's Land, which was seen as being more politically safe or scientifically correct than

assignment, and this thesis examines how the convict assignment system, which related penal outcomes of reform and punishment to economic productivity, was discarded for political and ideological reasons, rather than a consideration of the needs of the Australian colonies. The probation system, emerging out of the recommendations of a parliamentary committee on transportation chaired by William Molesworth, was to have quite the opposite effect, and that it was persevered with, 'in the face of all reason', was a consequence of political ambition and administrative miscalculation both in London and Van Diemen's Land, and was to profoundly affect the political development of the colony.

Inevitably, the probation system of discipline deprived the colonists of cheap and plentiful labour, and saturated the unsettled parts of the colony with idle gangs of convicts. The central focus of this thesis is how Van Diemen's Land could be perceived as a continuing part of Britain's penal system in the post-Molesworth era, and analysis's in detail John Montagu's responsibility for suggesting that the probation system was an acceptable successor to the assignment system, and the consequences which followed from this advice.



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## Abbreviations

<i>ADB</i>	<i>Australian Dictionary of Biography</i>
Arthur Papers	Sir George Arthur Papers
<i>Canadian Papers</i>	<i>The Arthur Papers, Being the Canadian Papers Mainly Confidential, Private and Demi-Official</i>
CO	Colonial Office Records
<i>HRA</i>	<i>Historical Records of Australia</i>
MS	Manuscript
<i>Memoir</i>	<i>Memoir of John Montagu, 1855</i>
Montagu Manuscript	The Montagu Manuscript Copy of the Complete Correspondence that Passed between John Montagu and the Secretary of State for the Colonies with Regard to Mr Montagu's Disagreement with Sir John Franklin, London, 1843. Presented by Mrs GN Atkins, 5 November 1943
RS	Royal Society Collection, University of Tasmania
Boyes Manuscript	Typescript of the GTWB Boyes Diary, Held by Mr Peter Chapman, University of Tasmania, 14 January 1842
<i>Narrative</i>	<i>Narrative of Some Passages in the History of Van Diemen's Land, Sir John Franklin, 1845</i>

## Introduction

This thesis analyses an extraordinary episode in the penal history of Australia: the introduction of the vast probation system in Van Diemen's Land c. 1839 - 1840 and its subsequent failure. We analyse how much a proposal could ever have been sustained in the post-Molesworth era: why Van Diemen's Land could have been presented as a credible location for such a momentous penal operation, and the salient flaws in the system which emerged as it was put into practice. The era of managed colonial penalism in Van Diemen's Land, which opened with the influential Bigge reports, was condemned by the investigations of the 1838 Molesworth parliamentary (select) committee on transportation, and ended with Charles Joseph Latrobe's condemnation of the system, was spanned by Governor George Arthur's "perfection" of the controversial assignment system, and later, by Downing Street's 'separate' or probation system of convict discipline, seen by the enlightened as being more politically safe or scientifically correct than assignment.<sup>1</sup> Before 1817, the convicts were 'subjected to little more than nominal constraint in the colonies'<sup>2</sup>, and under considerable political pressure in the House of Commons, the British Government seriously considered abandoning transportation to New South Wales and Van Diemen's Land. An investigation led by Commissioner John Thomas Bigge however reported in favour of the continuation of transportation, and in the analysis that followed, he recommended that the convicts should be largely removed from concentrated government employment (which incurred a significant cost), and dispersed into rural assignment and put to work in the country as shepherds and labourers. Bigge was also critical of Lachlan Macquarie, governor of New South Wales, and recorded that there was 'an entire absence of classification' of the convicts in the colony, and 'nothing appeared of the nature of an organised system of morality'.<sup>3</sup> Bigge

<sup>1</sup> Perhaps one could call it a 'politically correct' system in modern terms.

<sup>2</sup> Lord Bathurst to Lord Sidmouth, 23 April 1817, as reproduced in JT Bigge, *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, (Australian Facsimile Editions No. 68, Adelaide, 1966), p. 5.

<sup>3</sup> AGL Shaw, *Convicts and the Colonies*, (Faber and Faber, London, 1966), p. 82. John Ritchie's *Lachlan Macquarie* is also a particularly useful reference here. On this point, Bigge thought Macquarie 'had paid

held that Macquarie indiscriminately granted freedom to the convicts by way of ticket of leave<sup>4</sup>, that he granted land and convict servants to emancipists<sup>5</sup>, and that he appointed ex-convicts to the bench and other superior posts, and dined with them as guests at Government House.<sup>6</sup> It was of no consequence that many emancipist farmers were ultimately successful, nor that many of the public officials were judicious and reliable.<sup>7</sup> What the British Government wanted was proper and strict control over the convicts, and to make transportation more of a deterrent to criminals in Britain.<sup>8</sup> To this end transportation had to be seen to be a harsh punishment, while at the same time able to pay for itself. In support of Bigge, Macquarie's critics complained that too much money was being spent on the public works and that too many convicts were employed in the public service, although Macquarie himself argued that 'the influx of male convicts in the past five years has been so great that the settlement had not employment for one-eighth of the number that annually arrived in the colony'.<sup>9</sup> According to historian AGL Shaw however, irregularities and special cases in the colonies were regarded in England at least as widespread, and despite his assurances that the colony had answered all the purposes for which it was intended, Macquarie's defence conflicted with the evidence collected by Bigge. Having returned to England, Bigge recommended that prisoners sent to New South Wales should be assigned as labourers and shepherds in the country, under the supervision of respectable settlers, and the worst behaved convicts punished in penal settlements or sent to clear land or labour on the government farms in the unsettled districts. This served to dovetail punishment and reform, as well as to promote the economy of convictism. Despite Macquarie's concerns, Bigge's recommendations were ultimately successful in the convict societies of New South Wales and Van Diemen's Land, and formed the basis of colonial settlement and convict discipline in the colonies for the next 20 years.

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more attention to a prisoner's usefulness than to his crime and character'. See J Ritchie, *Lachlan Macquarie*, (Melbourne University Press, Melbourne, 1986), p. 175.

<sup>4</sup> Shaw, *Convicts and the Colonies*, p. 83.

<sup>5</sup> *Ibid.*, p. 85.

<sup>6</sup> *Ibid.*, p. 86-7.

<sup>7</sup> *Ibid.*, p. 87.

<sup>8</sup> *Ibid.*, p. 88.

<sup>9</sup> *Ibid.*, p. 95. Between 1809 and 1815, 3239 male convicts and 949 female convicts landed in the colony. Between 1815 and 1821, over 11,385 males and 899 females arrived (p. 96). In 1819, 6388 convicts were in private service compared with 2476 in government service.

Before he left England in September 1823 as the fourth lieutenant governor<sup>10</sup> of Van Diemen's Land, George Arthur was presented with a copy of Bigge's reports<sup>11</sup>, and on arrival in the colony, 'he instituted a system intended to reform the convict or punish him with rigid severity'.<sup>12</sup> Described by one historian as 'sitting atop a conning tower looking through a thousand eyes'<sup>13</sup>, he subjected the convicts and settlers alike to a regime wherein there were known advantages to be gained by observing the regulations, and hardships to be endured by ignoring them.<sup>14</sup> He also introduced a bureaucracy in the colony, and tried to appoint officials who were industrious, honest and hardworking.<sup>15</sup> The future Colonial Secretary, John Montagu, and the Chief Police Magistrate, Matthew Forster, were nephews of Arthur, and together with the closest confidants of the governor, were known generally by their political opponents as the Arthur party or "faction". This was not always the case, and some officials came to the colony with more patronage than Arthur could counter, and were wholly unsuited for public office. This had an unusual effect on the political landscape, and made for entertaining reading in the colonial press.

In Van Diemen's Land, Bigge's recommendations found an earnest advocate in Governor Arthur, and in 1833, Arthur declared

'the facilities afforded by this colony for carrying transportation into effect are such as could never be attained within the walls of a penitentiary'.<sup>16</sup>

In deference to the criticism that had plagued the New South Wales administration, he also added: 'there is not that uncertainty in the distribution of convicts on their arrival... it is regulated not arbitrarily but according to systematic arrangements'.<sup>17</sup>

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<sup>10</sup> Hereafter referred to as governor of Van Diemen's Land.

<sup>11</sup> L Robson, *History of Tasmania, Vol 1*, (Oxford University Press, Melbourne, 1983), p. 139.

<sup>12</sup> WD Forsyth, *Governor Arthur's Convict System*, (Sydney University Press, 1970), p. 199.

<sup>13</sup> *Ibid.*, p. 55.

<sup>14</sup> *Ibid.*, p. 62.

<sup>15</sup> J West, *The History of Tasmania*, (Angus and Robertson, Sydney, 1971), p. 139.

<sup>16</sup> Arthur to Goderich, 27 February 1833, as quoted in ed. P Chapman, *Historical Records of Australia*, Series 3, volume 7 (Australian Government Publishing Service, Canberra, 1997), p. xxi. References subsequently noted as *HRA*, III, VII, p. xxi.

At the centre of these 'systematic arrangements' was the assignment of the convicts to private masters, which Arthur described as the 'most efficient part of the system'.<sup>18</sup> He was also mindful of his responsibility to reform the convicts, and argued that

'this colony must be considered in light of an extensive gaol to the empire - the punishment of crimes and reformation of the criminals the grand objects, in its penal character, to be attended to'.<sup>19</sup>

The transportation system was dreaded by the convicts in Van Diemen's Land; classified into seven divisions according to their behaviour, a convict found himself (or herself) a games-piece in Arthur's snakes and ladders convict system almost immediately upon arrival in the colony. In the first half of his administration there was a great demand for the services of the convicts, and before 1833, they were a 'boon to their masters in a community which was short of labour'.<sup>20</sup> Similarly, convictism made many officials powerful and wealthy, including Arthur, and in 1832, it was reported that ten government officials employed 105 convict servants between them.<sup>21</sup> The strength of Arthur's government and his indefatigable zeal for controlling the public administration however made him unpopular with many colonists, and he increasingly came under scrutiny both at home and in the colony. He tried to control the press, withdrew convict servants from his detractors, resisted the introduction of trial by jury and increased the authority of the police and judiciary in the colony. Arguably, all this was necessary for the security and prosperity of a colony saturated with convicts, and while some were undoubtedly disadvantaged by it, many more were rewarded with social and political status.

After 1831, a political change became perceptible and presented a head on challenge to the whole idea of penal colonization. Social reform was again a major issue in the United Kingdom, and the case against transportation, which had lost some of its impetus after

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<sup>17</sup> Sir George Arthur, *Observations on Secondary Punishment*, (James Ross Printer, Hobart, 1833), p. 3

<sup>18</sup> *Ibid.*, p. 34

<sup>19</sup> Arthur to Bathurst, 21 April 1826, *HRA*, III, V, pp. 152-3

<sup>20</sup> AGL Shaw, *Sir George Arthur*, (Melbourne University Press, 1980), p. 87.

<sup>21</sup> Shaw, *Convicts and the Colonies*, p. 218.



Bigge's reports, again came under attention.<sup>22</sup> In particular, the French Revolution of 1830 stirred the interests of the parliamentary reformers in England<sup>23</sup>, and within a short time the 'Whigs and their allies sought to identify areas of society that stood in need of reform, to ascertain the facts through parliamentary inquiry and to remedy any defects by legislation.'<sup>24</sup> The enforced labour of the convicts for the benefit of their masters accorded specific attention, and in response to increasing political pressure, the Secretary of State, Lord Goderich (the future Lord Ripon), proposed to legislate for a tax of 10s on any convict engaged in the service of the colonists, and bowing to popular sentiment in England, suggested that he could no longer 'admit that any degree of respectability entitles a settler to derive a great pecuniary advantage from the public'.<sup>25</sup>

This proposal was to a degree rendered obsolete by the British Government's adoption of the Ripon Regulations, which ended further free land grants and the accompanying obligation of convicts to work on them. The new measures also initiated assisted free emigration from funds raised from land sales, and deprived Arthur, and also Governor Bourke in New South Wales, of their patronage in land grants. Later, the Molesworth committee also promoted free emigration as an alternative to transportation, and consulted the migrationist theorist, Edward Gibbon Wakefield, during the course of its proceedings. Nonetheless, the opposition rejected the state of society which had been created in New South Wales, and were strongly influenced by the pamphlet *Thoughts on Secondary Punishment*, an attack on transportation written by Archbishop Whately in 1832.<sup>26</sup> Whately argued that the transportation system had 'subordinated reformation to punishment, that it had failed to prevent crime', and that the assignment system 'supported

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<sup>22</sup>J Ritchie, 'Towards Ending an Unclean Thing: The Molesworth Committee and the Abolition of Transportation to New South Wales, 1837 - 40', *Historical Studies*, 67, (1976), p. 145.

<sup>23</sup>EL Woodward, *The Age of Reform 1815 - 1870*, (Oxford at the Clarendon Press, 1958), p. 75.

<sup>24</sup> Ritchie, Unclean Thing, p. 154.

<sup>25</sup> Lord Goderich to Arthur, 27 January 1832, CO 408/7, p. 10.

<sup>26</sup>Hay forwarded a copy of Whately's pamphlet to Arthur for comment on 29 December 1832. Hay wrote: 'In condemning the penal settlements and other establishments in Australia and at Norfolk Island, the author entirely loses sight of the fact, that when convicts are refractory and unfit to be assigned, some degree of coercion is absolutely requisite; and in criticizing the system of transportation as now carried on, he would appear to be ignorant, that it is not so much the system, as the mode in which it is carried into execution, which is objected to a different mode of sending away these criminals, and a different place of safe keeping, is what is required'. See Hay to Arthur, 29 December 1832, CO 408/9, p. 149. Whately also wrote a second paper in 1834 titled *Remarks on Transportation*.

the corrupting effects of the absolute power thought to be held by the colonists over their slaves<sup>27</sup>. The post 1832 reformatory impulses continued, and by 1835, the 'tide of opinion against the existing system of transportation rose in both the United Kingdom and the colonies'.<sup>28</sup> Critics of convict assignment, who more often than not had a political axe to grind, claimed that it led to unequal treatment among the convicts and was ineffective either as a punishment or means of reform. In his celebrated works titled *Observations on Secondary Punishment* and *Defence of Transportation*, Arthur, with the outward appearance of a penal philosopher, warned the Colonial Office that it should reconsider its plans to expend the revenue of the colony on the maintenance and discipline of the convicts, or else risk being exposed to the 'really hostile feeling of the inhabitants' whose wealth and status largely depended on their cheap labour. The economy of convictism aside, he also argued that transportation had 'a greater effect than any other punishment in suppressing crime'<sup>29</sup>, and was 'daily becoming better adopted for all the purposes of discipline'.<sup>30</sup>

Arthur's publications however were muffled by the political and social reforms sweeping England. A further startling development arose in 1837 when Captain Alexander Maconochie, who came to Van Diemen's Land as Private Secretary to Arthur's successor, Sir John Franklin, described Arthur's carefully built up system as 'cruel, uncertain, prodigal, and ineffectual either for reform or example' of the convicts.<sup>31</sup> Maconochie's subsequent reports were accepted by the Molesworth parliamentary committee on transportation in England as evidence of a 'slave experience' in the colonies, and in 1838, the chairman of the committee, William Molesworth, recommended to the English Parliament that transportation to New South Wales, and to the settled districts of Van Diemen's Land, should be discontinued as soon as

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<sup>27</sup> Ritchie, 'Unclean Thing', p. 145.

<sup>28</sup> *Ibid.*, p. 145

<sup>29</sup> Arthur, *Observations*, p. 38

<sup>30</sup> *Ibid.*, p. 52

<sup>31</sup> Report on Convict Discipline, No. 1, A Maconochie, 20 May 1837, contained in Franklin to Glenelg, 7<sup>th</sup> October 1837, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 439.

practicable.<sup>32</sup> Molesworth urged the government to increase immigration to the colonies, although Arthur argued that such a course might 'be injurious rather than useful'. While the British Government once again procrastinated over the case against transportation, Sir John Franklin, a celebrated explorer hero with no experience in such matters, found it increasingly difficult to 'evade the advice' those officials whom he had inherited from his predecessor, and who were 'possessed of much talent for business and of great local knowledge'.<sup>33</sup> Fearing more of the same from Arthur's chief officers, the opposition rallied in Van Diemen's Land and protested that it was the 'lamentable doom of this ill fated colony to witness the very men who made Arthur a tyrant, now circling and counselling the honest, the amicable Sir John Franklin'.<sup>34</sup>

At the head of the 'old' party were the Colonial Secretary, John Montagu, and his brother in law and Chief Police Magistrate, Matthew Forster, both nephews of Arthur, who 'formed a compact and strong body of connections and adherents bound to their [former] chief by ties of obligation and gratitude'.<sup>35</sup> Montagu had sailed with Arthur to Van Diemen's Land in 1824, and was described by one critic as an 'official warming pan, having been appointed to so many situations before he was confirmed in any one of them by the home government'.<sup>36</sup> Another commentator later remarked that 'like Colonel Arthur himself and all his relatives and connections, the Coll. [sic] Secretary and Ch. Police Magistrate in fitting up their offices as well in all other matters have taken particularly good care of themselves'.<sup>37</sup> The party's influence was generally felt in Van Diemen's Land, and when Franklin arrived in the colony, he indicated that he was determined not to disturb the late governor's policy without necessity. In any case,

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<sup>32</sup> Report from the Select Committee on Transportation, 3 August 1838, as reported in the British Parliamentary Papers (Transportation), Sessions 1837 - 1861, vol 3, p. iii. The Committee was appointed to inquire into the subject of transportation and prison form, among other proposals.

<sup>33</sup> Sir John Franklin, *Narrative of Some Passages in the History of Van Diemen's Land*, (Platypus Publications, Hobart, 1967), p. 7.

<sup>34</sup> *Colonial Times*, 4 April 1837.

<sup>35</sup> *Ibid.*, p. 7.

<sup>36</sup> H Melville, *The History of the Island of Van Diemen's Land*, (Australian Facsimile Edition, Adelaide, 1967), p. 140.

<sup>37</sup> 14 January 1842, as recorded in typescript of the GTWB Boyes Diary, held by Mr Peter Chapman, University of Tasmania.

Franklin could not easily evade the advice of Montagu and Forster, and following Arthur's recall, the *Launceston Examiner* reported that

'Sir John Franklin found himself in the midst of men who had been the creatures and agents of a system perhaps not wholly unfavorable to the colony, but specially useful to themselves'.<sup>38</sup>

The problem of civil reform in a convict colony also engaged Franklin's attention from a very early period in his administration. On this point he was enthusiastic, and besides, Franklin truly believed that the colony should become a very different place to the one Arthur had left behind. Franklin thought of his appointment as a new beginning in the history of Van Diemen's Land, and had reason to believe that he was coming to a colony which would shortly cease to be penal and enjoy the enlightenment of some semi elected institutions, as indeed were to be enjoyed by a partly elected Legislative Council in New South Wales. Privately, Montagu and Forster were not impressed by his sentiments, and thought that Franklin was not as attentive to the penal system as he should have been, and was easily distracted by matters which were not of primary interest to them. Consequently, some commentators argued that Franklin's reformist initiatives aroused inappropriate expectations in the colony, and Montagu and the rest of the party were compelled to offer guidance and assistance on every matter. Unfortunately for Franklin, Montagu and Forster took advantage of his inexperience, and expanded their own 'personal influence'.<sup>39</sup> Before long, the hapless governor, who lacked the colonial experience and political skill developed by Arthur, found himself floundering at the feet of his own officials. Arthur warned Franklin of the necessity of maintaining a tight hold on the reins of government:

'It would certainly be as unwise in you as it would be unwarrantable in me to expect that you should involve yourself in any individual controversies on my behalf, so that if my

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<sup>38</sup> *Launceston Examiner*, 24 December 1845.

<sup>39</sup> Franklin, *Narrative*, p. 9.

supporters become your supporters, I shall very sincerely rejoice, provided you can secure them without weakening your influence in other quarters.<sup>40</sup>

Arthur's warning was prophetic, and the press exploited the idea of Franklin's subservience to the party:

'In the proceedings, the Colonial Secretary is clearly, palpably and tangibly the Magnus Apollo of the Council; he features invariably and unequivocally as the unflinching advocate of any government measure'.<sup>41</sup>

To make matters worse for Franklin, the expense of the police establishment and the gaols were transferred to the Colonial Treasury in 1837 after a long dispute, even though the demand for convict labour was not as great as it had been during Arthur's administration. The colonial economy was in a state of retrogression, and a sudden decline in English spending forced down the value of exports. A new settlement opened up across Bass Strait, and in 1835 speculative investment was diverted from Van Diemen's Land to the Port Phillip District. There is no doubt Franklin was 'honest and amicable', brave, determined and 'would obey orders to the letter'.<sup>42</sup> He had received the approbation of his superiors in London following his exploratory feats, but lacked the experience and shrewdness of a penal colony governor. Franklin, a naval officer, also lacked the Colonial Office patronage of his distinguished predecessor, which complicated his administration of predominantly military men. Penal politics aside however, the colonists were still largely dependant on the availability of cheap convict labour for their own existence, and rumours of the abolition of transportation, fuelled by the reports of the Molesworth committee, prompted the old regime to concede that the perpetuation of the old system was no longer practicable and that transportation had been rendered nearly as effective as could be expected in Van Diemen's Land under the existing system of early assignment to private service.

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<sup>40</sup> Arthur to Franklin, Arthur Papers, Undated, 1821 - 1855, vol 5, A2165.

<sup>41</sup> *Colonial Times*, 10 October 1837.

<sup>42</sup> F Fleming, *Barrow's Boys*, (Granta Books, London, 2000), p. 126.

Political division in New South Wales also had the effect of drawing the attention of British legislators to the case against convict assignment and transportation in the colonies, and in 1839 the Secretary of State at the Home Office, Lord John Russell, conceded:

'As I contemplate the introduction of free institutions into New South Wales, I am anxious to rid that colony of its penal character'.<sup>43</sup>

In the following year, Russell, who had made no clear distinction between New South Wales and Van Diemen's Land in his criticism of transportation, told Franklin that he had decided to discontinue transportation to New South Wales, and to confirm the abolition of assignment in both colonies. This was in keeping with the reformist agenda in Britain, and according to some observers, Russell and the home government, who were politically under siege by the opposition and the radicals, identified reform and social stability both in Britain as well as in the colonies as a 'potential tool rather than a formidable threat'.<sup>44</sup> Franklin defended the practicality of the old system, and argued that the 'physical interests' of the colony depended on the cheap labour of the convicts, and availed himself 'of whatever useful suggestions' might be employed to secure its continuation in the current form. Meanwhile, Montagu had returned to England in 1839 on leave after misappropriating convict labour for his own use, and was intent on securing employment closer to home. The colonial press made a great deal of Montagu's abuse of the assignment system in the William Clapperton affair, and eagerly exploited the perception that it was he rather than Franklin who governed the colony. In typical style, the colonial newspaper, *True Colonist*, declared:

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<sup>43</sup> British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 288.

<sup>44</sup> M Bentley, *Politics Without Democracy*, (Fontana Press, London, 1996), p. 107.

'Mr Montagu would never have dared so to have insulted Colonel Arthur, for he with all his errors never was found deficient in enforcing that respect which was due to him as Lieutenant Governor'.<sup>45</sup>

Nevertheless, Montagu commanded an unusual degree of influence and respect in Downing Street, and was consulted almost immediately on his arrival by the home government about the proposed changes to the convict system in New South Wales and Van Diemen's Land. It was an extraordinary turn of events; only months beforehand he was a colonial official in a far flung corner of the empire defending himself against a charge of misappropriating convict labour for his own benefit - and now, within a few days of his arrival in England, he was summoned by the new Secretary of State for the Colonial Office and asked to comment on the single most important penal blueprint that had been contemplated in the colonies since settlement. Following the release of the Molesworth committee reports, transportation to New South Wales and the settled districts of Van Diemen's Land, and private assignment in both colonies, was abolished, although Russell and rest of the government was undecided as to how it should effectively and prudently dispose of its redundant prisoner population. It was an opportune moment for Montagu; like many colonists, Franklin hoped Montagu's presence in England might 'be an infinite advantage to the colony' and the colonists dependent on cheap convict labour, and sent him a letter assuring him that he was 'better qualified than any other person to comment on any subject connected with the colony'.<sup>46</sup>

It is the outcome of this episode, and a second timely meeting at the Colonial Office in 1842, which is the central focus of this thesis: how Van Diemen's Land could be perceived as a continuing part of Britain's penal system in the post-Molesworth era, and how the subsequent, ultimately disastrous, probation system came to be introduced in the colony. His spirits high and his indiscretions overlooked, Montagu told Franklin that the

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<sup>45</sup> *True Colonist*, 23 February 1838. William Clapperton was a convict who was reassigned to Montagu by Forster, allegedly on the basis of his culinary expertise. The affair created a sensation in the colony, and is fully developed in chapter 5.

<sup>46</sup> Franklin to Montagu, 13 October 1839, as reproduced in the *The Montagu Manuscript Copy of the Complete Correspondence that Passed between John Montagu and the Secretary of State for the Colonies with Regard to Mr Montagu's Disagreement with Sir John Franklin*, London, 1843, RS 114, p. 114.

'great transportation question was by no means set at rest', and established himself as the architect of the continuation of transportation to Van Diemen's Land after 1839. Sensitive to the new (or in modern terms politically correct) penal theory sweeping England respecting the abolition of slavery and, consequently, sharp criticism of transportation, Montagu 'concocted a scheme'<sup>47</sup> (as Lady Franklin put it) which satisfied the reformists and economists in Downing Street, and effectively redirected *all* of the convicts previously sent to New South Wales and Van Diemen's Land to Tasman's Peninsula to work in probation gangs for wages. The Colonial Office considered Montagu's proposal as a practicable replacement for assignment in Van Diemen's Land, and thereon followed an unprecedented flow of convicts into Van Diemen's Land stemming from the abolition of transportation to New South Wales. The effect was that after 1839, the number of convicts arriving in Van Diemen's Land doubled, and with little or no prospect of continuous paid employment in the settled districts, the colonial government was obliged to maintain the new arrivals on Tasman's Peninsula at a great cost to the treasury and the political aspirations of the colonists. Montagu's blueprint was based on the false premise that Van Diemen's Land, and in particular, Tasman's Peninsula, could safely and economically absorb *any* number of convicts, when in fact the colonists stood to lose their cheap, private labour to the unprofitable gangs with near disastrous economic consequences for the colony. Montagu's proposal grossly misrepresented the Peninsula's resources to facilitate such large arrivals of men, and made no effective provision for superintendence, education, religious instruction or reform. To make matters worse, the demand for labour in Van Diemen's Land varied quickly, as did the demand for exports from the colony in England, and after a short burst of growth between 1837 and 1839, there was a shortfall in home and colonial government funding after 1840.<sup>48</sup> There was a general fall in wool prices in the colonies, complicated by a fall in sales in England, and exports of grain and livestock from Van Diemen's Land fell considerably in light of strengthening markets on the mainland.<sup>49</sup> High interest rates and inflated mortgages quickly eroded declining profits, and the balance of payments

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<sup>47</sup> Lady Franklin to Mrs Simpkinson, 6 February 1841, MS 248/174/1-23. Mary, Jane Franklin's sister, married John Simpkinson when she was 21 years of age. They had three children.

<sup>48</sup> J West, *The History of Tasmania*, (Angus and Robertson, Sydney, 1971), p. 587, note 135.

<sup>49</sup> K Fitzpatrick, *Sir John Franklin in Tasmania*, (Melbourne University Press, Melbourne, 1947), p. 312.



became acute in 1842.<sup>50</sup> Consequently, holdings went uncultivated, and land sales plummeted, depriving the ticket of leave holders of paid employment.

Notably, the influence of the ex-governor, Sir George Arthur, was still felt in the colony after his recall in 1836. Contrary to later assessments which portray Arthur as indifferent to penal affairs in Van Diemen's Land after the breakup of the assignment system, Arthur advised the Colonial Office in 1841 that a further 25,000 convicts might be provided for on Tasman's Peninsula. It was not the first time Arthur had exaggerated the attractiveness of the Peninsula; like Montagu, who advised Russell in 1839 that the Peninsula contained 'about 200,000 acres of land', Arthur indicated several years before that there was upwards of 175,000 acres of land on the Peninsula which could be adopted for the employment of the convicts. In 1839 however, Franklin conducted a survey of the Peninsula which found only 13,000 acres of 'alluvial soil' worth cultivating. In any case, encouraged by the earlier assessments, the Under Secretary of State, James Stephen, noted on Stanley's letter that there can 'be no doubt, that for a long time to come, any number of convicts who might be sent out from this country could be received in that colony'.<sup>51</sup> This supported Montagu's case and enhanced his reputation at the Colonial Office as an informed penal commentator.

Not surprisingly, the Colonial Office was unmoved by Montagu's request for a new posting, and he was sent back to Van Diemen's Land to oversee the implementation of the new probation system. Franklin thought Montagu, buoyed by his intimacy with the Colonial Office, returned to the colony with an 'overwhelming, arrogant, presumptuous and conceited opinion of himself', and that he 'had become more jealous of control'.<sup>52</sup> After failing to implement Russell's elaborate and nearly unworkable penal instructions, Franklin was 'openly opposed and his authority undermined' by the old party<sup>53</sup>, and it was in these circumstances that a case of misadventure finally divided Franklin's administration, and Montagu was subsequently suspended from office in dramatic

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<sup>50</sup> *Ibid.*, p. 312.

<sup>51</sup> Lord Stanley's Minute to James Stephen, 31 October 1841, CO 280/139, p. 271.

<sup>52</sup> Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

<sup>53</sup> *Launceston Examiner*, 24 December 1845.

circumstances in February 1842. The dismissal culminated in a political frenzy in the colony, and the ousted Colonial Secretary returned to England bent on revenge, and set about undermining Franklin's reputation at the Colonial Office. Montagu assigned much of the blame for his breakdown in relations with the governor to Franklin's wife, Lady Jane Franklin, and publicly accused of her 'petticoat dominion'. Fortunately for Montagu, the Colonial Office concurred with his analysis, and while Franklin continued to suppress his own criticism of the new system, the Secretary of State recalled Franklin and ordered a further development in the colony.

Humiliated and angry, Franklin received no support in Downing Street following his unceremonious recall, and in 1845, he set off in search of the North-West Passage, to a tragic and heroic death which stirred the imagination of the Empire. In contrast, Montagu satisfied the Colonial Office that he was still capable of bureaucratic acuteness, and submitted a revised system of convict punishment for the colony on the eve of his departure for Cape Colony as the new Colonial Secretary in September 1842. Simply titled 'Memorandum of Alterations Proposed in the Transportation of Offenders from England and in Conducting Secondary Punishment at Van Diemen's Land and Norfolk Island', Montagu again recommended that Van Diemen's Land should become the 'principal penal settlement for the reception of offenders transported from Great Britain'. 'The convicts on arrival', he continued, 'either from England, Norfolk Island or elsewhere', were to be 'subjected to the discipline labour now in operation there under the regulations established for the probation system'.<sup>54</sup> Montagu's assumptions about the vitality of the economy were again flawed, and the ongoing depression after 1841 negated any prospects of success for the probation system. Unfortunately for Franklin's successor, Sir Eardley Eardley Wilmot, the colonial treasury was still destitute of funds, and the colony was increasingly saturated with unemployed convicts. Inexperienced in colonial affairs, Wilmot found the depressed state of affairs in the colony an insurmountable obstacle, and was ultimately a victim of the inherent failings of imperial penal policy. Unlike Montagu however, Wilmot's economic analysis was acute, but his failure to report concisely on the 'soundness of the principles, and the wisdom of the [new

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<sup>54</sup> Montagu to Stanley, 11 November 1842, CO 280/ 151, p. 377.

probation system]', ensured that he attracted a heavy portion of the blame for its inevitable failure. The Colonial Office later reported that Wilmot had failed in his public duty and was effectively dismissed from office. Finally, in 1847, Charles Joseph La Trobe completed an investigation into the probation system of discipline engineered by Montagu and the Colonial Office, and after collecting a mass of evidence, reported that it had been a fatal experiment, and the sooner it was put to an end the better.<sup>55</sup> There were grave consequences for Van Diemen's Land in adopting the probation system of punishment, and this study analyses in detail Montagu's responsibility for suggesting that it was an acceptable successor to the assignment system, and the consequences which followed from this advice.

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<sup>55</sup> CJ Latrobe to Grey, 31 May 1847, as quoted in I Brand, *The Convict Probation System*, (Blubber Head Press, Hobart, 1990), p. 129.

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## **'Assignment is the most efficient part of the system'**

Lieutenant Colonel George Arthur sailed into the Derwent River aboard the *Adrian* on 12 May 1824 as the fourth lieutenant governor of Van Diemen's Land. His appointment followed the British Government's decision, after it had considered the recommendations of Commissioner John Thomas Bigge, that it would continue to transport convicts to New South Wales and Van Diemen's Land, but try to 'tighten up the system'.<sup>56</sup> Bigge was appointed Commissioner of Inquiry into the Australian colonies in January 1819, after the Secretary of State for the Colonies, Lord Bathurst<sup>57</sup>, had become concerned that transportation to New South Wales was 'neither an object of apprehension, nor the means of reformation in the settlement itself'.<sup>58</sup> In a letter to the Home Secretary, Lord Sidmouth, in April 1817, Bathurst wrote:

'My Lord, I have for some time past had under consideration the present state of the settlements in New South Wales, principally with a view of satisfying myself whether they are now calculated to answer the object for which they were originally established, or whether it might be expedient to introduce some alteration in the existing system'.<sup>59</sup>

It concerned Bathurst that the convicts were unable to find regular employment, and that ticket of leave pardons were granted, almost without exception, to any convict that had a prospect of 'obtaining a livelihood by their own exertions'.<sup>60</sup> Bathurst added that the

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<sup>56</sup> Shaw, *Convicts and the Colonies*, p. 191. Bigge also received a similar commission at Cape Colony, Mauritius and Ceylon after his investigations were finalised in New South Wales. See ed. D Pike, *Australian Dictionary of Biography Vol 1*, (Melbourne University Press, Melbourne, 1967), p. 99.

<sup>57</sup> Earl Bathurst served as Secretary of State at the Colonial Office between June 1812 and April 1827, when Viscount Goderich succeeded him.

<sup>58</sup> Bathurst to Sidmouth, 23 April 1817, CO 324/138, p. 141. The letter is also reproduced in JT Bigge, *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, (Australian Facsimile Editions No. 68, Adelaide, 1966), p. 5. See also ed. F Watson, *Historical Records of Australia*, Series I, vol 10, (The Library of the Commonwealth Parliament, Canberra, 1921), p. 807. References subsequently noted as *HRA*, I, X, p. 807.

<sup>59</sup> *Ibid.*, p. 807.

<sup>60</sup> *Ibid.*, p. 807.

convicts were subjected to little more than nominal constraint in the colonies, and that few of their number laboured under regular or severe discipline.<sup>61</sup> Bathurst also spoke of the assignment system whereby a convict working for his master enjoyed a 'freedom inconsistent with the object proposed in transporting them, and where the settlers themselves felt a 'repugnance to submit to the enforcement of regulations... applicable to a penitentiary'.<sup>62</sup>

Bathurst concluded:

'I am apprehensive that Your Lordship will not be able to hold out any expectation that the crimes to be punished by transportation will diminish in magnitude or frequency; or that the numbers to be transported will in this, or indeed succeeding years, be less considerable. This continued influx must annually increase the difficulty which has long been experienced, of enforcing on the convicts such a strict discipline, both as to labour and deportment, as is essentially necessary to make transportation answer the purpose either of punishment or reform... The settlement must be either placed upon a footing that shall render it possible to enforce, with respects to all convicts, strict discipline, regular labour, and constant superintendence; or the system of unlimited transportation to New South Wales must be abandoned'.<sup>63</sup>

Governor Macquarie's<sup>64</sup> emancipist policy in New South Wales attracted most attention. It was not until 1819 that the first convict barracks were built in the colony, which permitted 'closer discipline and longer working hours' for the convicts.<sup>65</sup> Previously, the men had to find their own lodgings after dark, and not unexpectedly, there was an increase in the number of robberies and burglaries committed in the colony.<sup>66</sup> Not that Macquarie was lax; he asked Bathurst for funds to build the barracks as early as 1814, and even when construction began, he was acting in contravention of Bathurst's

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<sup>61</sup> *Ibid.*, p. 807.

<sup>62</sup> *Ibid.*, p. 807.

<sup>63</sup> *Ibid.*, p. 807.

<sup>64</sup> Macquarie was governor of New South Wales between 1810 and 1821.

<sup>65</sup> Shaw, *Convicts and the Colonies*, p. 81.

<sup>66</sup> *Ibid.*, p. 81.

instructions. Bathurst overlooked the indiscretion, but when Macquarie was criticised by the opposition for being too lenient on the convicts, he began to look closely at his administration and relevance of the colony.<sup>67</sup> Macquarie saw transportation as a fresh start for the convicts, and rewarded good behaviour with land grants, servants and ultimately, freedom. This improved discipline in the colony, but appeared to do nothing to reduce the crime rate in England. He also promoted ex-convicts or emancipists in the public service because he found them 'loyal and conscientious servants', although as expected, he attracted criticism from some of the free settlers overlooked for the positions.<sup>68</sup> Some ex-convicts, like Andrew Thompson, D' Arcy Wentworth, Simeon Lord and Henry Fulton, were even appointed to the magistracy, while others occupied senior appointments in the surveyor's office and convict department.<sup>69</sup> Not that the majority of Macquarie's appointees proved dishonest or incompetent; it was just that they were ex-convicts in a penal colony which among other reasons was established to deter criminals from committing crime in England. Macquarie was also criticised in the colony for depriving the free settlers of skilled convict labour, and while many were employed on the public works, there is evidence that most were generally unoccupied when engaged in private employment.<sup>70</sup> Consequently, Macquarie was suspicious of placing the convicts in remote situations, and even more so under the control of those settlers who were critical of his government, and was determined to employ them where supervision was more effective, and inevitably, expensive. After 1817, Macquarie's convict policy became increasingly unpopular at the Colonial Office, and Bathurst questioned whether the colony was serving the purposes for which it was settled.<sup>71</sup> Bathurst was not prepared however to decide between the alternatives without current and detailed knowledge of the state of New South Wales. To this end, Bathurst issued the Commission, dated 19 January 1819, to Bigge, who had been appointed Chief Justice

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<sup>67</sup> *Ibid.*, p. 83.

<sup>68</sup> *Ibid.*, p. 87.

<sup>69</sup> *Ibid.*, p. 86.

<sup>70</sup> *Ibid.*, p. 91.

<sup>71</sup> *Ibid.*, p. 101. Also, it should be noted the controversy of Chief Justice Bent in New South Wales further increased Macquarie's unpopularity both at home and in the colony.

of Trinidad in 1813.<sup>72</sup> Bathurst's instructions to Bigge were four fold; firstly, to report on the 'possibility of an abandonment of the present system of transportation', so far as regarded the existing settlements; secondly, 'to consider whether the alterations introduced into the courts in 1812 had rendered them adequate to the wants of the inhabitants; thirdly to inquire into and report upon the actual and probable revenues of the colony; and lastly, to consider the propriety of admitting persons into society who originally came to the settlement as convicts'.<sup>73</sup>

Parliamentary debate on the criminal law, transportation and New South Wales reinforced the ideas of 'severity and economy, punishment and profit'<sup>74</sup>, which Bathurst specified in his instructions to Bigge. There were critics of transportation whose persistence could not be ignored - politicians and social reformers who regarded the settlement in New South Wales as a 'dangerous social experiment, and who were influential because they could raise their voice in the House of Commons'.<sup>75</sup> In a characteristic attack on the government, the outspoken legal reformer and politician Sir Samuel Romilly<sup>76</sup> declared 'plainly that something should be done to provide for the reformation of convicted criminals: imprisonment', he insisted, 'merely made them worse; in the hulks, either they died, or they became more dangerous offenders, and transportation to New South Wales had proved to be ineffacious, on account of the lax administrative system which had been adopted there'.<sup>77</sup> Speaking in 1810<sup>78</sup>, Romilly represented a movement for reform<sup>79</sup> which had its origins in the work begun by John

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<sup>72</sup> Copy of a Letter From Earl Bathurst to John Thomas Bigge, 6 January 1819, reproduced in JT Bigge, *Report of the Commissioner of Inquiry into the State of the Colony of New South Wales*, (Australian Facsimile Editions, No. 68, Adelaide, 1966), p. 2. The letter is also reproduced in *HRA*, I, X, p. 8.

<sup>73</sup> *Ibid*, p. 8.

<sup>74</sup> J Ritchie, *Punishment and Profit*, (William Heinemann, Melbourne, 1970), p. 65.

<sup>75</sup> ACV Melbourne, *Early Constitutional Development in Australia*, (St Lucia, University of Queensland Press, 1963), p. 48.

<sup>76</sup> Romilly was born in London in 1757, and after studying in Paris, turned his attention to politics in 1806. With an interest in law reform, Romilly succeeded in abolishing the death penalty in cases of private stealing from the person (as opposed to shoplifting and from the home), and wrote a number of books on transportation and confinement in the hulks, including *Observations on the Criminal Law of England*, and an exposition on Jeremy Bentham's papers about punishment and reform. After a distinguished political career, Romilly took his own life in October 1818. See eds. L Stephen and S Lee, *The Dictionary of National Biography*, (Oxford University Press, London, 1917), p. 188.

<sup>77</sup> Melbourne, *Constitutional Development*, p. 48.

<sup>78</sup> 5 June 1810. See Melbourne, *Constitutional Development*, p. 48.

<sup>79</sup> EL Woodward, *The Age of Reform 1815 - 1870*, (Oxford at The Clarendon Press, 1958), p. 48.

Howard, the 'zealous evangelical Christian who spent years visiting and inspecting the prisons in England'<sup>80</sup>, and that too of Jeremy Bentham, the law reformer, who denounced transportation because it was a poor punishment and was uncertain.<sup>81</sup> Bentham had expressed his vexation for the colony in a pamphlet titled *Panopticon versus New South Wales* published in 1802<sup>82</sup>, which, he declared, 'provided more than enough evidence to condemn it'. Prime Minister Pitt and the rest of the Parliament however were unmoved; the potential high cost of the 'great penitential engine styled on the self interest of the all seeing master-owner who would ensure his supervision of a system of efficient keepers producing sober industrious citizens from former criminals, rendered his argument unpersuasive'.<sup>83</sup>

Following in Romilly's footsteps, Whig spokesman, Henry Grey Bennet, was particularly critical of transportation in the House of Commons, and in March 1817<sup>84</sup>, he moved a petition in protest against the 'oppressive and unjust' behaviour that was perceived to be occurring in the colonies.<sup>85</sup> In a letter to the Home Secretary, Lord Sidmouth, Bennet wrote:

'[Transportation is neither] equal, exemplary nor reformatory; it deters no man from crime, restores few to virtue... Pursue the career of crime abroad which you have begun so well at home... We see not your misery and we soon forget you ever existed'.<sup>86</sup>

It was against this backdrop of protest that Bathurst finally appointed Bigge Commissioner of Inquiry in January 1819. Bennet persisted in his protests, submitting further petitions to Parliament in February 1819<sup>87</sup>, and again in March.<sup>88</sup>

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<sup>80</sup>JB Hirst, *Convict Society and its Enemies*, (George Allen and Unwin, Sydney, 1983), p. 9.

<sup>81</sup>*Ibid.*, p. 12.

<sup>82</sup>*Ibid.*, p. 12.

<sup>83</sup>P Chapman (ed.), *Historical Records of Australia*, III, VII (The Library of the Commonwealth Parliament, 1997), p. xx. Hereafter referred to as *HRA*, III, VII, p. xx.

<sup>84</sup>10 March 1817.

<sup>85</sup>Melbourne, *Constitutional Development*, p. 52.

<sup>86</sup>Bennet to Lord Sidmouth, 25<sup>th</sup> April 1817, as quoted in Shaw, *Convicts and the Colonies*, p. 102.

<sup>87</sup>Bennet to Lord Sidmouth, 18 February 1819, as quoted in Shaw, *Convicts and the Colonies*, p. 102.

<sup>88</sup>Bennet to Lord Sidmouth 1<sup>st</sup> March 1819, as quoted in Shaw, *Convicts and the Colonies*, p. 102.



Having visited both New South Wales and Van Diemen's Land between September 1819 and February 1821, Bigge returned to England and submitted the first of his three reports to Parliament in May 1822. 'Before 1822', says historian John Ritchie in his classic exposition, 'the administration of the transportation system in New South Wales was erratic and expensive, unreliable and confusing. From that year onwards attempts were made to implement Bigge's recommendations for order and economy, to reconcile punishment and profit, and to blend punishment with colonial policy'.<sup>89</sup> Bigge had collected a mass of evidence from both government officials and colonists during his tours in the colonies, and though his enquires meandered, his reports were generally well accepted by the British Government. In brief, Bigge recommended that the convicts should be removed from government employment and assigned to the service of the settlers in the country, and that grants of land might be made to the settlers in accordance with the number of convicts that they chose to employ. In this way, Bigge envisaged a better class of emigrant would be attracted to the colonies in consequence of a staple industry, and in turn, their arrival would be conducive to the improvement and reform of the convicts.<sup>90</sup> In July 1823<sup>91</sup> the British Government passed the 1823 Act which provided for the continuation of transportation to New South Wales and Van Diemen's Land, and other matters of administrative and judicial interest, some following on from Bigge's recommendations. According to Ritchie, Bigge's success had been in 'dovetailing' a regular system of punishment with the New South Wales and Van Diemen's Land economy, and in making recommendations for the establishment of regularity in the place of randomness in penal discipline by classifying the convicts according to their behaviour. In any case, his reports pleased Bathurst, and went some way to quietening the protests that had reverberated through the British Parliament six years earlier.

Before sailing for Van Diemen's Land, Governor Arthur was presented with some of Bigge's recommendations for certainty and regularity in the punishment of the convicts, and instructions from Bathurst on how to revive among the criminal class in Britain a

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<sup>89</sup>Ritchie, *Punishment and Profit*, p. 247.

<sup>90</sup>Bigge, *Report into the Colony*, p. 161.

<sup>91</sup>19 July 1823.

dread of transportation, the apparent absence of which was of immediate concern to the British Government. According to the contemporary historian John West in 1852, the new governor took occasion 'to express his conviction that the moral example of the free population was essential to the improvement of a class less favoured; and that while employing his authority for the general welfare of the colony, he resolved to maintain the rights of the Crown. Such sentiments and purposes were just', West wrote, 'but scarcely likely at that moment to be heard with pleasure.'<sup>92</sup>

In August, Arthur referred to Bathurst's instructions which provided for the 'moral improvement and discipline of the convicts', and were considered 'a main point in the administration of these colonies'. 'In both these particulars', Arthur continued, 'much must depend upon the co-operation of the settlers, amongst whom so large a body of the convicts are dispersed'.<sup>93</sup>

His theory was simple enough and reflected Bigge's recommendations; 'it seems then the only course to be pursued is to strengthen the hands of the more respectable, and to improve, if possible, the moral character of the inferior class of settlers, which no doubt sinks lower and lower from the want of those outward forms and ordinances of religion, to which they have been accustomed in their native country, and without which I believe in any country immorality would be equally predominant'.<sup>94</sup>

One consequence was 'the free manners of old Hobart town' were shaken by Arthur's 'puritanism'<sup>95</sup>, though according to historian WD Forsyth in his analysis of Arthur's convict system in Van Diemen's Land, the 'rule of saints was neither to their taste nor to their profit'.<sup>96</sup> He set about to relieve those suspected of corruption and incompetence from their offices, prompting Joseph Tice Gellibrand, a government official, to declare that the governor had destroyed personal communication with the people where it once

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<sup>92</sup>J West, *The History of Tasmania*, (Angus and Robertson, Sydney), 1971, p. 81.

<sup>93</sup> Arthur to Bathurst, 15 August 1824, *HRA*, III, IV, p. 161.

<sup>94</sup> *Ibid.*, p. 161.

<sup>95</sup>WD Forsyth, *Governor Arthur's Convict System*, (Sydney University Press, 1970), p. 171.

<sup>96</sup> *Ibid.*, p. 171.

existed in 'perfect harmony'.<sup>97</sup> Arthur was equally as quick to punish those colonists who set a bad example for their convict charges, declaring that 'I have already drawn off these people, in cases of particular abuse, the servants who have been given them'.<sup>98</sup>

To protect the autonomy of the government, Arthur attempted to secure control of the colonial press by claiming a stake in the proprietorship of the *Hobart Town Gazette*, the only newspaper in Van Diemen's Land in 1824. Referring his desire for ownership of the paper to Governor Brisbane in Sydney, Arthur was dealt an embarrassing blow when the Governor-in-Chief declared the whole establishment to be the property of the printer, emancipist Andrew Bent.<sup>99</sup> Brisbane also infuriated Arthur in October 1824 by ordering the complete removal of the censorship of the colonial press. Brisbane wrote to Bathurst in January of the following year of his decision to 'try the experiment of the full latitude of the freedom of the press', commenting that 'the measure has been productive of more benefit than disadvantages to the public'.<sup>100</sup> Arthur was exposed to the ridicule of the opposition in the press, and for several months he 'bore the brunt of a campaign of anonymous, unsparing criticism'.<sup>101</sup>

Politics aside, the transportation system was dreaded by the convicts in Van Diemen's Land; classified into seven divisions according to their behaviour, a convict found himself (or herself) a games-piece in Arthur's "snakes and ladders" convict system almost immediately upon arrival in the colony. In the first division, a convict who had served his sentence without incident, or who had shown himself worthy of the highest reward, received a ticket of leave which allowed the convict to work for wages and live outside the strict confines of the convict system. The assignment system, or second division, was the first placement for nearly every convict who arrived in the colony, and was also the principle means of supplying labour to the settlers in Van Diemen's Land. Arthur set down a series of regulations for governing the assigned men, though essentially, they

<sup>97</sup>L Robson, *The History of Tasmania, Vol 1*, (Oxford University Press, Melbourne, 1983), p. 292. Not surprisingly, Arthur later suspended Gellibrand from office. See chapter 3.

<sup>98</sup>Arthur to Bathurst, 15 August 1824, *HRA*, III, IV, p. 161.

<sup>99</sup>J Woodberry, *Andrew Bent and the Freedom of the Press in Van Diemen's Land*, (Fullers Bookshop, Hobart, 1972).

<sup>100</sup>Brisbane to Bathurst, *HRA*, I, II p. 470.

<sup>101</sup>RW Giblin, *The Early History of Tasmania*, (Melbourne University Press, 1939), p. 440.

were to work for their master in return for clothing, food and lodging. Those in the townships were usually employed in domestic service<sup>102</sup>, while those employed in agricultural pursuits mended fences, herded stock and assisted in the construction of homes and outbuildings. According to Forsyth, his labour was compulsory and unpaid, and he was obliged to obey his master's command on pain of being brought before a Magistrate. In turn, he had the right to complain to a magistrate of mistreatment, and, in theory at least, was not subject to corporal punishment from his master.<sup>103</sup>

Poor behaviour or the perpetration of crime in the colony exposed the convict to the lower levels of Arthur's vast classifying machine; following on from the third and fourth class, where convicts worked in road and gang parties, convicts laboured in the fifth division on the roads in chains, followed by the sixth and seventh classes, where punishment was served in the harsh penal settlements of Macquarie Harbour, and later, Port Arthur and Maria Island. A fear of descending into the lowest level of Arthur's system however was only one of the aims of the system; the other - reformation, was held out to the convict in the form of a ticket of leave, assignment or labouring for the government on the public works, all of which was a long way from the severity of the chain gangs and penal settlements.

Arthur himself best describes a convict's movement through the system:

'A mode of management has been substituted, in which, while the convict is allowed to rest upon and be supported by the stimulus of hope, he is yet made bitterly and painfully to feel his degradation, and to dread a second conviction more than, as appears from the evidence to which I have referred, were he to be exposed to penitentiary discipline'.<sup>104</sup>

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<sup>102</sup> While most convicts were assigned in the country as agricultural labourers, some served as cooks, maids, butlers, seamstresses, nursemaids, coachmen, grooms, housekeepers and gardeners. Generally, only government officials and wealthy town based merchants were afforded this luxury by the government. For instance, John Montagu, the Clerk of Councils, employed 19 servants, while Matthew Forster, the Chief Police Magistrate, employed 16. At one time during 1832, ten government officials employed 105 convict servants between them. See Shaw, *Convicts and the Colonies*, p. 218 and p. 234.

<sup>103</sup> Forsyth, *Convict System*, p. 97.

<sup>104</sup> Arthur, *Observations*, p. 13.

Writing to Bathurst in August 1825, Arthur explained that he had taken it upon himself the 'entire management of the assignment of the convicts; and although the trouble has been great', he continued, 'I have resolved to go through it, that I might have a perfect insight into the circumstances of their employment'.<sup>105</sup>

Arthur was convinced that assigning the convicts to the settlers upon their arrival in the colony held out the best chance for their reformation:

'the result [of my observations] is the conviction that the moral improvement of these people will be best, indeed, can only be promoted by their being assigned as labourers in the country'.

Magistrates supervised the assignment system in each of the nine police districts, who in turn forwarded the returns, memorials and applications to the Chief Police Magistrate in Hobart. The Chief Police Magistrate then submitted a general statement of behaviour, requests and details about punishments to Arthur. On the whole, Arthur was satisfied with the system he had implemented:

'laxity and severity are thus equally restrained. The system is made to harmonise more completely in all parts, and the government has acquired in consequence a moral influence over the minds of the convicts, which alone, so satisfactorily is its operation, would amply compensate for the labour that ensures it'.<sup>106</sup>

And later, Arthur declared:

'Assignment is the most efficient part of the system'.<sup>107</sup>

The assignment system was strictly policed to ensure that the colonists did not lose sight of the 'great objects of punishment and correction', and where an infringement of the

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<sup>105</sup> Arthur to Bathurst, 10 August 1825, *HRA*, III, IV, p. 312. Bathurst replied in May 1826. See below.

<sup>106</sup> Sir George Arthur, *Defence of Transportation*, (George Crowie Printer, London, 1835), pp. 33-4.

<sup>107</sup> Arthur, *Observations*, p. 34.

regulations was discovered, the master stood to lose his servants with disastrous economic consequences. Arthur knew that this was enough to keep the majority of settlers in line, and in 1833, he lamented that

'the gaoler or penitentiary keeper, however zealous he may usually be in the discharge of his duty in England, is not kept to it by the conviction that his own property is at stake; but in Van Diemen's Land this obtains to the utmost'.<sup>108</sup>

The Colonial Office also recognised how precarious their position was; in 1832, Lord Goderich<sup>109</sup>, Secretary of State at the Colonial Office, observed that

'a complaint against a servant, which leads to his being withdrawn for the purpose of undergoing the punishment he has deserved, is now attended with a heavy pecuniary loss'.<sup>110</sup>

According to Forsyth, there was another element to Arthur's system; 'in order to render transportation secure it was necessary to keep the settlers attached to it by economic interest'.<sup>111</sup> Arthur opposed the free immigration of labourers 'on the basis that it would lessen the value of convict labour; and the less would be the fear of withdrawal of assigned servants as a punishment for breaching the regulations'. Forsyth also wrote that the 'indispensability of the settlers to assignment' allowed Arthur to keep in check those influences which had the potential to undermine the continuation of transportation to the colony.<sup>112</sup>

A fundamental question at issue for the colony was what civil institutions, if any, a penal colony could enjoy. Writing to the Under Secretary of State at the Colonial Office,

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<sup>108</sup> *Ibid.*, p. 142.

<sup>109</sup> Goderich served as Secretary of State at the Colonial Office between April 1827 and September 1827, when Huskisson succeeded him.

<sup>110</sup> Goderich to Arthur, 27 January 1832, CO 408/7, p. 10.

<sup>111</sup> Forsyth, *Convict System*, p. 121.

<sup>112</sup> Arthur specifically pointed out in 1833 that the colony was not 'too far advanced for the purposes of a penal settlement' (Arthur, *Observations*, p. 45). This is the way he had tried to keep it since early in his administration - it was imperative for the continuation of transportation.

Robert John Wilmot-Horton<sup>113</sup>, in February 1825, Arthur explained that 'the admission of a free press within the last few months, which certainly as regards V.D. Land is a very much premature measure and one my predecessor dreaded very much'.<sup>114</sup> 'The effect of this upon the convict population', he continued in a second despatch dated September 1825, 'you may well imagine, and I have no doubt it has been most injurious, for these governments require all fair support to contend with such lofty spirits, as you had to deal with when the New South Wales Bill was under discussion'.<sup>115</sup> Indeed, he further observed that 'it seemed to me but reasonable that a free constitution should proceed a free press!'<sup>116</sup> In the same despatch to Wilmot-Horton, Arthur concluded that it had been 'utterly impossible' to carry the wholesome measures into execution, and at the same time 'give satisfaction to the settlers and merchants, who, on refusal of land, the assignment of a convict, or the enforcement of any regulation which interferes with their public interest, instantly declare their determination to call a public meeting and report home'.<sup>117</sup>

Personally, Arthur was sensitive to criticism and anxious to maintain and protect his autocratic rule. Arthur was particularly mindful about the nature of social affairs in New South Wales, and already, he observed, an account<sup>118</sup> of the proposals made by William Charles Wentworth advocating free and representative government had been published and widely distributed in Van Diemen's Land - a form Arthur conceded was 'directly injurious to a penal colony'.<sup>119</sup> Arthur had reached a turning point in this early period of his administration. The privileges of political freedom 'so happily enjoyed in England', he wrote, 'are quite inconsistent and unsafe in many respects in penal colonies, and there is no stopping half way'.<sup>120</sup> Arthur was not alone in his sentiments. The Archdeacon of New South Wales, Thomas Hobbes Scott, who was also a friend of Arthur and had been

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<sup>113</sup>Wilmot Horton held this office from December 1821 to October 1827, when Lord Stanley succeeded him.

<sup>114</sup>Arthur to Horton, 10 February 1825, *HRA*, III, IV, p. 237.

<sup>115</sup>Arthur to Horton, 14 September 1825, *HRA*, III, IV, p. 367.

<sup>116</sup>*Ibid.*, p. 367.

<sup>117</sup>*Ibid.*, p. 371.

<sup>118</sup>William Charles Wentworth published his *Statistical Account of the British Settlement in Australia* in 1820. For a commentary of the circumstances surrounding the publication of the book, see Melbourne, *Constitutional Development*, pp. 67 - 70.

<sup>119</sup>Melbourne, *Constitutional Development*, p. 126.

<sup>120</sup>Arthur to Horton, 14 September 1825, *HRA*, III, IV, p. 367.

Private Secretary to Bigge, commented in February 1826 that freedom of the press had threatened the welfare of the convicts:

'Unfortunately, too many of those free people of better informed understanding, give their support to such persons who have been convicts (now free) sent hither for crime; and abusing their state of freedom, inflame the convicts to discontent, and excite in the minds of the common settler imaginary grievances and oppressions'.<sup>121</sup>

Similarly, Arthur wrote: 'every vicious character in this colony should not at his own pleasure be allowed to establish a paper and become the organ of public morals and independent principles'.<sup>122</sup> In April 1826<sup>123</sup>, Bathurst informed Arthur that he had been justified in his vehement opposition of the press, and initiated legislation to regulate the printing and publishing of newspapers.<sup>124</sup> 'It is impossible not to perceive', declared Bathurst, 'from the most cursory examination of them, that the entire exception of the publishers from all restraint of the local government must be entirely dangerous in a society of so peculiar description'. Bathurst continued: 'You will therefore avail yourself of the earliest opportunity of proposing to the Legislative Council... that no newspaper be published without a licence to be applied for to the Governor... Every licence should be forfeited upon the conviction of the publisher, printer or proprietor for any blasphemous or seditious libel'. Ultimately the legislation was disallowed on the grounds that it was 'repugnant to the law of England', although by the time Arthur got news of the appeal, he had already stamped his authority on the colony, and probably averted the threat of anarchy which he and Scott feared would engulf the settlement.<sup>125</sup>

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<sup>121</sup> Scott to Arthur, 13 February 1826, *HRA*, III, V, p. 156. Born in 1783, Thomas Hobbes Scott first visited New South Wales in 1819 as Secretary to Commissioner John Thomas Bigge, and later returned there as Archdeacon in October 1824. He made two long visits to Van Diemen's Land, and was a friend of Arthur. He died in 1860. See ed. D. Pike, *Australian Dictionary of Biography Vol 2*, (Melbourne University Press, Melbourne, 1967), p. 431.

<sup>122</sup> Arthur to Horton, 14 February 1825, *HRA*, III, IV, p. 367.

<sup>123</sup> Bathurst to Arthur, 2 April 1826, *HRA*, III, V, p. 130.

<sup>124</sup> Bathurst also sent a copy of the despatch on 11 May 1827 (*HRA*, I, XII, p. 16) to Governor Darling in New South Wales, who succeeded Brisbane.

<sup>125</sup> The despatch was dated 24 August 1828, although he did not receive it until December. See Shaw, *Sir George Arthur*, p. 100. See also *HRA*, III, VII, p. 759.



A rejuvenated Arthur set about the arduous task of restoring the colony to its original character as a 'salutary place of punishment and terror', and in perfecting the great 'sifting machine' he had already put into operation.<sup>126</sup> Arthur wasted no time in consolidating his position. Writing to Bathurst in April 1826, Arthur declared that

'this colony must be considered in the light of an extensive gaol to the Empire - the punishment of crimes and reformation of the criminals the grand objects, in its penal character, to be attended to'.<sup>127</sup>

By 1833, Arthur was in no doubt that the colony had become just that;

'Classification is the soul of convict discipline. The whole territory is one large penitentiary, over the several parts of which convicts are distributed, not by chance or accident, but in obedience to principles rigidly observed<sup>128</sup>... Here punishment is certain.'<sup>129</sup>

Similarly, Arthur also wrote:

'The facilities which this colony affords in carrying these various graduations, commensurate with the conduct of the convicts, into effect, must, I think, in the eyes of His Majesty's Government, render it one of the best and most economical prisons, on a large scale, that could be devised'.<sup>130</sup>

The means by which Arthur effected this principle was five fold; firstly, by the presence of a strong military force; secondly, by the erection of proper places of confinement; thirdly, by an active judicial establishment; fourthly, by establishing an effective

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<sup>126</sup> Bathurst to Brisbane, 3 February 1824, *HRA*, I, X, p. 791. Forsyth refers to the system as continually 'sifting and re-sifting the material cast into it' (Forsyth, *Convict System*, p. 139).

<sup>127</sup> Arthur to Bathurst, 21 April 1826, *HRA*, III, V, pp. 152-3.

<sup>128</sup> Arthur, *Observations*, p. 16.

<sup>129</sup> *Ibid.*, p. 25.

<sup>130</sup> Arthur to Hay, 25 July 1832, CO 280/34, p. 289.

surveillance system and lastly, by the influence of religion.<sup>131</sup> Arthur acknowledged that for a time penal regulations might create 'jarrings' and 'discontent', but he was quick to note that before long such difficulties, 'discouraging at the moment', would pass away. Arthur romanticised that 'when transportation shall cease, and all its chains and trammels disappear, a flourishing country will at once be exhibited, one of the fairest monuments of Your Lordships long administration.'<sup>132</sup> After the press debate, Arthur subordinated political and social freedoms to penal interests in the colony of Van Diemen's Land. As far as he was concerned, that 'time' had not yet come and would not occur in his time as governor, unless otherwise sanctioned by the Colonial Office.

It also pleased Bathurst that Arthur had taken it upon himself to superintend the increasingly controversial assignment system, and that 'he had devoted so much time to this important point'. Bathurst agreed that assignment afforded the 'best chance of moral improvement of these people', and he urged Arthur to continue enforcing the strict regulations that prevented the convicts escaping from their masters and becoming bushrangers.<sup>133</sup>

By 1827, Arthur was able to report to Bathurst 'that since the independence of the colony in November 1825, every branch of the government has been formed and modelled... and [all] that in the face of a party still existing strongly adverse to any corrective measures, and bent upon giving me all the opposition in their power.'<sup>134</sup> Likening government house to a 'Benthamite'<sup>135</sup> cell block where 'the autocrat saw through a thousand eyes', Forsyth believes that Arthur's insistence on obedience led him

<sup>131</sup> Arthur to Bathurst, 21 April 1826, *HRA*, III, V, p. 152.

<sup>132</sup> *Ibid.*, p. 153.

<sup>133</sup> Bathurst to Arthur, 14 May 1826, *HRA*, III, IV, p. 231.

<sup>134</sup> Arthur to Bathurst, 23 March 1827, *HRA*, III, V, pp. 621-2.

<sup>135</sup> Reference to the ideas of Jeremy Bentham. Bentham was born in England in 1747, and first began his political writings in 1776. In 1778, he turned his attention to crime and punishment, and in 1785, he left England and visited his brother in Russia. There he wrote a number of letters on an inspection house or 'panopticon', which his brother had devised to supervise industry, but Bentham thought it could be better used to supervise criminals in jail. The building was circular, with cells on every story, and a lodge for the guard to see all the prisoners without being seen himself. While the scheme met with favour, it was very expensive and was never constructed along the lines that Jeremy Bentham had wished. Bentham was also a reader of the works of John Howard, another great penal philosopher. See L Stephens, *The Dictionary of National Biography*, Vol 2, (Oxford University Press, London, 1917).

to choose officials who would carry out his orders without question, adding fuel to the fiery criticism of his government. According to Forsyth, 'personal government was brought as close as possible to its logical conclusion, the direction of all the affairs of a society by a single mind'.<sup>136</sup> Indeed, the extent of his reach was characterised by Peter Murdoch, Magistrate at Oatlands in the rural heart of the colony, who complained to the Molesworth Select Committee on Transportation in 1838 that Arthur seemed to direct every movement, even the appointment of a petty constable.<sup>137</sup> Murdoch continued:

'One felt when trying a man that the whole thoughts were necessarily directed to know what Colonel Arthur, or the Chief Police Magistrate, would think of it, not to what was the just sentence'.<sup>138</sup>

As was invariably the case with most witnesses before the Select Committee on Transportation however, Murdoch conceded that 'in a colony so situated as Van Diemen's Land, containing such an immense number of criminals under sentence, a system of centralised government was necessary in a community not solely comprised of free people'.<sup>139</sup>

Arthur's concept of society had been very much in keeping with Commissioner Bigge's recommendations: a powerful but loyal gentry kept in check by the government; an active Church and clergy; large acres of land granted by the Crown, and a flexible assignment system. According to historian Lloyd Robson, Arthur began almost on his arrival to develop a small but powerful class that would bolster his position and act as a buffer between him and the old party:

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<sup>136</sup>Forsyth, *Convict System*, pp. 54 - 55.

<sup>137</sup>*Ibid.*, p. 51. See also Minutes of Evidence taken before the Select Committee on Transportation, 1838, Peter Murdoch, Q. 1421, as reported in the British Parliamentary Papers (Transportation), Vol 3, Sessions 1837 - 1861, p. 116. For Select (or Molesworth) Committee see chapter 6.

<sup>138</sup>*Ibid.*, p. 116.

<sup>139</sup>*Ibid.*, p. 117.

'The woolgrowers of the colony became the gentry, and to safeguard their interests the settlers required law and order, docile servants and conditions in which to expand their fleece'.<sup>140</sup>

Conversely, the settlers of Van Diemen's Land came to depend upon the patronage of the government for their labour and land, and were rigorously policed to ensure their cooperation.<sup>141</sup> Indeed, the power to revoke the assigned men seemed to Arthur 'the mainspring by which the movement of a mass of men can be worked with advantage here'.<sup>142</sup> The safety of the free settlers from runaways and plunderers was equally strategic, and in 1828, Arthur explained to Huskisson, who succeeded Bathurst as Secretary of State, that his surveillance system, which had 'partially been in operation for two years', exceeded his expectations. He wrote:

'A mistrust and jealousy has hereby been infused into the prisoner population, which gives a security to the free inhabitants of which they were before entirely destitute, and, of which they stood greatly in need'.<sup>143</sup>

Policing came at a cost though; writing to Robert William Hay in 1830<sup>144</sup>, John Montagu, Clerk to the Councils in Van Diemen's Land, explained that a great 'expense has been incurred by the Crown, to obtain an effective police'.<sup>145</sup> Arthur depended on the surveillance and informant system however to impress upon the prisoners that their condition depended upon their behaviour. He subjected the convicts and settlers alike to a regime wherein there were known advantages to be gained by observing the regulations, and hardships to be endured by ignoring them.<sup>146</sup> Like Bigge, Arthur was

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<sup>140</sup> Robson, *History*, p. 265.

<sup>141</sup> *Ibid.*, p. 265. In a despatch written to Bathurst in August 1824, Arthur explained that 'it seems the only course to be pursued is to strengthen the hands of the more respectable, and to improve, if possible, the moral character of the inferior classes of settler'. See Arthur to Bathurst, 15 August 1824, *HRA*, III, IV, p. 161.

<sup>142</sup> Arthur to Bathurst, 4 April 1826, as quoted in Shaw, *Convicts and the Colonies*, p. 218.

<sup>143</sup> Arthur to Huskisson, 21 April 1828, *HRA*, III, VII, p. 233.

<sup>144</sup> Hay served as Permanent Under Secretary at the Colonial Office between July 1825 and January 1836, when James Stephen succeeded him.

<sup>145</sup> Montagu to Hay, 10 April 1830, Fulham, CO 280/27, p. 199.

<sup>146</sup> Forsyth, *Convict System*, p. 62.

critical of the 'opinions entertained by Governor Macquarie'<sup>147</sup> [who] argued that banishment ought to be considered a perfect expiation of the crime... and that he should be, after a certain ordeal, re-admitted into society'.<sup>148</sup> Instead, Arthur believed in 'keeping these people on their proper level'.<sup>149</sup>

In accordance with Bigge's recommendations, Arthur wrote:

'The wages of labour and the advantages of freedom are at the same time a misery and a stimulus to him. The desperate exertions often made, the dangers incurred, the sacrifices submitted to without a murmur, in the hope of obtaining a ticket of leave, prove how irksome and wretched his condition becomes'.<sup>150</sup>

It would be misleading to infer that the strictness of the system denied freedom to all but the most well behaved. 'Coercive measures', wrote Arthur, 'must be bound by humanity; if they are not, the criminals are driven into a state of mind bordering on desperation'.<sup>151</sup> Rather, the strictness of his administration made the system of indulgence only the more effective in its primary object, the encouragement of convicts to reform, for the less it was seen that undeserving prisoners and officials were given rewards, the greater was the incentive to avoid offences against the stringent code of Arthur. Arthur was proud of his accomplishments. Writing in 1833, he declared: 'These arrangements produce excellent results'.<sup>152</sup>

Even so, according to Tasmanian historian Peter Chapman, the 'cold shadow of Jeremy Bentham stalk[ed] behind much of Arthur's own reformism'<sup>153</sup>:

'In Van Diemen's Land, Bentham's panopticon, which had fallen on death ears in England, persisted as a rationale for the convict assignment system, where the panoptical

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<sup>147</sup> Governor of New South Wales from 1810 to 1821.

<sup>148</sup> Arthur, *Observations*, p. 44.

<sup>149</sup> Arthur to Bathurst, 27 January 1827, *HRA*, III, V, p. 490.

<sup>150</sup> Arthur, *Observations*, p. 33.

<sup>151</sup> Arthur to Hay, 21 March 1827, *HRA*, III, V, p. 367.

<sup>152</sup> Arthur, *Observations*, p. 18.

<sup>153</sup> *HRA*, III, VII, p. xix.

eye of its governor-master would ensure his supervision of a system of efficient keepers producing sober industrious citizens from former criminals'.<sup>154</sup>

In 1833, Arthur reported to Lord Goderich that:

'the facilities afforded by this colony for carrying transportation into effect are such as could never be attained within the walls of a penitentiary. There is a large territory over which the classes of evil disposed convicts are separated... from those convicts inclined to reform; and above all there is in operation, contributing to this very result, the principle of self interest in Van Diemen's Land. Bentham's notion that gaolers should possess a personal interest in the reform of the convicts under their charge, is beautifully realised in Van Diemen's Land.'<sup>155</sup>

Arthur added with satisfaction that 'there is not that uncertainty in the distribution of convicts on their arrival... it is regulated not arbitrarily but according to systematic arrangements'.<sup>156</sup>

Arthur was confident that he had met with the satisfaction of his masters in London; after all, he had carefully studied the system up close, and constantly supervised its every turn. Later, Arthur recorded that his object had not been the 'defence of certain opinions, but truth generally'. That is, what he said was the truth because he had overseen it himself - and that, for all intensive purposes, was beyond reproach, or so he thought.

By 1830 however, social reform was again a major issue in the United Kingdom, and the case against transportation, which had lost some of its impetus after Bigge's reports, again came into focus.<sup>157</sup> In particular, the French Revolution of 1830 stirred the interests of the parliamentary reformers in England<sup>158</sup>, and within a short time the 'Whigs and their allies sought to identify areas of society that stood in need of reform, to ascertain the facts

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<sup>154</sup> *HRA*, III, VII, p. xx.

<sup>155</sup> Arthur to Goderich, 27 February 1833, as quoted in *HRA*, III, VII, p. xxi.

<sup>156</sup> Arthur, *Observations*, p. 3.

<sup>157</sup> Ritchie, 'Unclean Thing', p. 145.

<sup>158</sup> Woodward, *Reform*, p. 75.

through parliamentary inquiry and to remedy any defects by legislation.<sup>159</sup> During the autumn of 1830 trouble broke out in the agricultural districts of southern England<sup>160</sup>, and subsequent attacks upon the corn laws<sup>161</sup>, which had once been directed against corn dealers and millers, became an attack upon the land owners accused of profiting from their tenant's hardship. Indeed, the landowners held a majority in parliament, and the corn laws were seen as an attempt by a 'parliament of landlords' to legislate purely in their own interests as 'owners of the soil'.<sup>162</sup> According to historian EL Woodward, 'the reform of Parliament and the destruction of aristocratic privilege had been the questions at issue, and Tories and Whigs alike saw that electoral reform could not safely be postponed.'<sup>163</sup> Consequently, a Reform Bill was drawn up by a cabinet committee, and introduced into the House of Commons on 1 March 1831. Lord John Russell<sup>164</sup>, then a junior member of cabinet, was largely responsible for framing the Bill, but after a hostile reception, it had to be withdrawn; it was amended and re-introduced next year and became law in June 1832, adding 217,000 voters to the electorate of 435,000 in England and Wales.<sup>165</sup> Its effects were not immediate, and according to historian John Ritchie, it was more of a 'symbol of change than of actual accomplishment.'<sup>166</sup> There were some changes however, including the abolition of slavery, the 1833 Factory Act and the 1834 New Poor Law<sup>167</sup>, the moral impetus of which was transferred to the case against New South Wales.<sup>168</sup>

For the first time, observes John Ritchie, New South Wales was described as a 'slave society that had been corrupted as much by transportation as the West Indies had been by

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<sup>159</sup> Ritchie, 'Unclean Thing', p. 154.

<sup>160</sup> Woodward, *Reform*, p. 76.

<sup>161</sup> *Ibid.*, p. 59, for a discussion of the corn laws.

<sup>162</sup> *Ibid.*, p. 58.

<sup>163</sup> *Ibid.*, p. 75.

<sup>164</sup> Russell (1792 - 1878) was an active reformist of government in Britain and in the colonies, and later became Prime Minister. He is a prominent figure in Van Diemen's Land history, and his career is further discussed in this paper. See *ADB*, vol 2, p. 407.

<sup>165</sup> The second reading (or revision) was held on the 24 June 1831, and the third on the 12 December 1831. On 7 June 1832, the Reform Bill received Royal Assent.

<sup>166</sup> Ritchie, 'Unclean Thing', p. 154.

<sup>167</sup> *Ibid.*, p. 154.

<sup>168</sup> Hirst, *Convict Society*, p. 24. See also chapter 6.

slavery.<sup>169</sup> Previously', he continues, 'the colony had been seen as a corrupt society because the evil doers were dragging down the virtuous. Now corruption was associated with the fundamental relationship of the penal colony - the enforced labour of the convict for the benefit of his master.'<sup>170</sup> Similarly, historian John Hirst observes that the assignment system attracted the brunt of reformer's complaints in England, which centred on the private control and influence exercised by the colonists over their convict servants. 'This led to unequal treatment that made transportation an ineffective punishment', added Hirst, 'and established the corrupting relationship of slave ownership'.<sup>171</sup>

In Van Diemen's Land too the 'sniping from the Colonial Office increased in intensity.'<sup>172</sup> Russell's attention was initially drawn to the penal settlement in New South Wales after the opposition claimed similarities between the slave system and the transportation system.<sup>173</sup> Like Lord Howick<sup>174</sup>, who had earlier observed that 'all the evils of a slave society had taken root in the colonies'<sup>175</sup>, Russell was concerned by the state of society which had been created in New South Wales, and was strongly influenced by the pamphlet *Thoughts on Secondary Punishment*, an attack on transportation written by Archbishop Whately in 1832.<sup>176</sup> Whately argued that the transportation system had 'subordinated reformation to punishment, that it had failed to prevent crime, and that it had corrupted both the convict and the master in the same manner as did slavery'<sup>177</sup>:

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<sup>169</sup> *Ibid.*, p. 21.

<sup>170</sup> *Ibid.*, p. 21.

<sup>171</sup> *Ibid.*, p. 22.

<sup>172</sup> Shaw, *Sir George Arthur*, p. 66.

<sup>173</sup> Ritchie, 'Unclean Thing', p. 154.

<sup>174</sup> Viscount Howick, the eldest son of the Prime Minister, Earl Grey, served as Parliamentary Under Secretary at the Colonial Office between 1830 - 1833, Parliamentary Under Secretary at the Home Office in 1834, and later as Secretary of State at the Colonial Office between 1846 - 1852.

<sup>175</sup> Hirst, *Convict Society*, p. 24.

<sup>176</sup> *Ibid.*, p. 25. Hay forwarded a copy of Whately's pamphlet to Arthur for comment on 29 December 1832. Hay wrote: 'In condemning the penal settlements and other establishments in Australia and at Norfolk Island, the author entirely loses sight of the fact, that when convicts are refractory and unfit to be assigned, some degree of coercion is absolutely requisite; and in defending the system of transportation as now carried on, he would appear to be ignorant, that it is not so much the system, as the mode in which it is carried into execution, which is objected to a different mode of sending away these criminals, and a different place of safe keeping, is what is required'. See Hay to Arthur, 29 December 1832, CO 408/9, p. 149.

<sup>177</sup> Ritchie, 'Unclean Thing', p. 145.



'It has been shown, I think, very clearly in the subjoined articles, that the punishment of transportation is eminently defective; and most so, in the most important way, - the power of exciting a salutary terror in offenders'.<sup>178</sup>

Whately's criticism was an immense disappointment for Arthur, who was still smarting about the views promulgated by Edward Gibbon Wakefield in another pamphlet titled *A Letter from Sydney* in 1829.<sup>179</sup> Wakefield urged the British government to consider 'the connection between slavery, the redundant poor, systematic colonisation and transportation', whereby British emigration financed by the public sale of colonial lands at a fixed price would prevent labourers from becoming landowners too soon, but create a healthy working class.<sup>180</sup> Wakefield's theories were welcomed by the colonial reformers and their spokesmen in the House of Commons<sup>181</sup>, and on 28 January 1831 the then Secretary of State at the Colonial Office, Viscount Goderich<sup>182</sup>, 'set down in writing the new thinking in Britain on the subject of emigration and land settlement and their grand objectives'.<sup>183</sup> This alteration in the mode of disposing of Crown lands drew a series of comments and criticisms from the governor of Van Diemen's Land. Arthur feared it would lead to the arrival of unwanted paupers, and even more regrettably it would upset his convict system, especially if it were to be financed, as suggested, by a tax on the employment of assigned servants.<sup>184</sup>

In 1833, Arthur responded in a pamphlet titled *Observations Upon Secondary Punishment*.<sup>185</sup> Having specified how successful his own system had proven, Arthur turned his defence into an attack on the 'in-utility and inefficiency of prison or penitentiary discipline'<sup>186</sup>.

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<sup>178</sup> *Ibid.*, p. 11.

<sup>179</sup> Ritchie, 'Unclean Thing', p. 152. See chapter 2 for an analysis of Wakefield's proposal.

<sup>180</sup> *Ibid.*, p. 152.

<sup>181</sup> *Ibid.*, p. 152.

<sup>182</sup> Goderich served as Secretary of State at the Colonial Office between April and September 1827. He again served as the Secretary between 1830 and 1833.

<sup>183</sup> Robson, *History*, p. 202. The policy became known as the Ripon Regulations.

<sup>184</sup> *Ibid.*, p. 207.

<sup>185</sup> Shaw, *Sir George Arthur*, p. 67. Arthur also wrote a second paper titled *Defence of Transportation* in 1835.

<sup>186</sup> Arthur, *Observations*, p. 7 and p. 12.

'A mode of management has been substituted, in which, while the convict is allowed to rest upon and be supported by the stimulus of hope, he is yet made bitterly and painfully to feel his degradation, and to dread a second conviction more than, as appears from the evidence to which I have referred, were he to be exposed to prison discipline.'<sup>187</sup>

At issue too was the 'corrupting effects of the absolute power thought to be held by the colonists over their slaves.'<sup>188</sup> Arthur complained that a 'convict in England is a slave without anything in his condition to promise amendment - he does not even hope for it, he makes no struggle.'<sup>189</sup>

But for Whately and his supporters, compulsory labour in a penitentiary, the favoured alternative to transportation, was perfectly acceptable and was no longer described as slavery<sup>190</sup>:

'In the present state of our knowledge, therefore, it would be our wisest and safest course to establish, in different places, several penitentiaries on different plans, such as may seem to have the most to recommend them; and after a trial of a few years, to introduce modifications as experience shall suggest, and remodel the less successful on the pattern of those which may be found to answer their purposes better'.<sup>191</sup>

Arthur objected to Whately's assumption that the colonists enjoyed absolute power over their convict charges:

'It is true that in Van Diemen's Land the settler may have a property in the service of convicts, but then no one is trusted with their care who is incapable of their proper management... Neither is there that inequality in the punishment of transported convicts that has been represented; on the contrary, it is conducted upon a carefully arranged

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<sup>187</sup>*Ibid.*, p. 13.

<sup>188</sup>Hirst, *Convict Society*, p. 23.

<sup>189</sup>Arthur, *Observations*, p. 15.

<sup>190</sup>Hirst, *Convict Society*, p. 22.

<sup>191</sup>Whately, *Thoughts on Secondary Punishment*, p. 11.

system, by means of which a man is made to suffer privation in proportion as he displays a disposition to reform or to continue in the practice of those vices which originally led to his expatriation.<sup>192</sup>

His reasoning for reform was based on the belief that not all of the convicts were devoid of good habits, and that crime was really a consequence of economic hardship and misery. Arthur rejected the idea that the convicts formed a 'community of felons' in Van Diemen's Land, and argued that the 'moral conduct of many depended upon expediency, rather than inward principle.'<sup>193</sup> Indeed, Arthur's penal philosophy had never been so evident as it was in 1833:

'If we ask, from what class do thieves spring, we are answered, from among the poor and the ignorant, from those who have been pinched with penury and exposed to temptation, who have been the victims of an unwilling and unavoidable ignorance of the force of moral obligations, from the circumstances in which they have been placed in infancy, and who upon their arrival here, have for the first time, had an opportunity of developing traits of character, which under a happier condition would probably always, even in England, have distinguished them'.<sup>194</sup>

It was Arthur's argument that the system laid down in Van Diemen's Land allowed for a 'economic rehabilitation' of the convict under the 'supervision of a master, whose own interest and respectability required that he should create in his servants habits of industry and labour'.<sup>195</sup> Arthur asked:

'May not the convict after a certain period, being fed with food convenient for him, acquire new habits, new rules of action, and a new character, such as would have

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<sup>192</sup> Arthur, *Observations*, p. 16.

<sup>193</sup> *Ibid.*, p. 23.

<sup>194</sup> *Ibid.*, p. 23.

<sup>195</sup> *Ibid.*, p. 24 In New South Wales, Governor Bourke agreed. According to Shaw, he recognised it's economic value; his objection lay in its effect on the character of the masters. See Shaw, *Convicts and Colonies*, p. 245. Shaw added that economically, the assignment system was successful, in that basically a civilian population was utilised to supervise the criminals (p. 246).

distinguished him always, but for the poverty which in youth caused him to steal and to take the name of God in vain?<sup>196</sup>

In Van Diemen's Land, Arthur concluded a convict was 'separated from the associates who would have endeavoured to check these good results, and he has been removed from the scenes in which crime was first made to appear to him desirable. He discovers', continued Arthur, 'that there is no old established thief associations to which he may unite himself, that the limited population would render detection inevitable, and that to indulge in crime would be to follow a losing course, and to secure himself misery and lasting privation.'<sup>197</sup>

Consequently, the principles of the "snakes and ladders" system was foremost in the convict's mind; 'a man therefore', wrote Arthur, 'can calculate beforehand with certainty upon the penalty attached to the commission of each offence, and he is generally aware that it will much more than counterbalance any advantage he could possibly anticipate'.<sup>198</sup>

It was a controversial argument indeed, that a convict might be reformed after 'profitably breaking up the soils of Van Diemen's Land', and that the returns of his labour would be more advantageous than if he were to be disciplined in a penitentiary in Britain. In Arthur's defence he was right - Britain was 'relieved of [the convicts] presence, and from an almost certain repetition of crimes and convictions necessarily involving great expense'.<sup>199</sup> In Van Diemen's Land, the statistics showed that major crime decreased between 1827 and 1832, and that lesser offences like disobedience and idleness became noticeably fewer.<sup>200</sup> All this was evidence in Arthur's eyes that transportation had 'a greater effect than any other punishment in suppressing crime'<sup>201</sup>, and was 'daily becoming better adopted for all the purposes of discipline'.<sup>202</sup>

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<sup>196</sup> *Ibid.*, p. 24.

<sup>197</sup> *Ibid.*, p. 24.

<sup>198</sup> *Ibid.*, p. 25.

<sup>199</sup> *Ibid.*, p. 36.

<sup>200</sup> Shaw, *Convicts and the Colonies*, p. 227.

<sup>201</sup> Arthur, *Observations*, p. 38.

<sup>202</sup> *Ibid.*, p. 52.

Whately was intent on defeating transportation in its current form, and in a second paper titled *Remarks on Transportation* in 1834, he declared:

'If their attempt to vindicate the system of transportation be, as it appears to me to be, a total failure, I would attribute this to the totally untenable character of their position, rather than to any fault of its defenders...' <sup>203</sup>

From the proliferation of inquiries into prison discipline in the 1830's, and the growing number of protests against transportation, it was obvious that changes would soon be made to the system, irrespective of how 'vigorously' Arthur might defend it.<sup>204</sup> Though Russell and Howick accepted the case against the present system of transportation, they did not want to abandon it completely.<sup>205</sup> They were deterred by the cost of alternatives for accommodating the convicts, the political ramifications from the overcrowded hulks anchored on the Thames, and more by the realisation that if convicts were kept in England they would find it very hard to get work after their punishment period was over.<sup>206</sup> One thing was clear to them - assignment of convicts to private masters in any capacity would have to cease<sup>207</sup> or be modified, and an alternative source of labour supply to the free colonists would have to be considered.<sup>208</sup>

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<sup>203</sup> R Whately, *Remarks on Transportation: and a Recent Defence of the System in a Second Letter to Earl Grey*, (B Fellowes Printer, London, 1834), pp. 9 -10.

<sup>204</sup> Shaw, *Convicts and the Colonies*, p. 266.

<sup>205</sup> Ritchie, 'Unclean Thing', p. 147.

<sup>206</sup> Hirst, *Convict Society*, p. 25.

<sup>207</sup> *Ibid.*, p. 25.

<sup>208</sup> Ritchie, 'Unclean Thing', p. 150.

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## 'The Lamentable Doom of This Ill Fated Colony'

In January 1831, the Ripon Regulations, as they became known, which set down a new, radical set of rules for the distribution of land in the colonies, deprived Arthur, and also Bourke in New South Wales, of their patronage in land grants.<sup>209</sup> Hitherto, free land grants formed the basis of Arthur's convict assignment system, 'a system that reserved land for capitalists'<sup>210</sup> and increased the value of convict labour. Land was now to be sold not granted free and the proceeds applied to free immigration from Britain to Van Diemen's Land. In return, 'the settlers were expected to stay at home, to keep their convict servants in custody, and to denounce their infractions of penal rule'.<sup>211</sup> Now however the 'landed' part of the formula (the great bond in the system) was coming into question: in 1832, Lord Goderich remarked:

'as far as I am acquainted with the history of the new settlements, there is no instance in which the practice of making free land grants has been followed without leading to... abuse. Various regulations have been adopted with a view of guarding against it, but these, enough complicated and otherwise inconvenient, have uniformly failed to accomplish their intended objectives'.<sup>212</sup>

Goderich also remarked that

'to such a power being placed in any hands, there are the strongest objections. It gives a species of patronage to its possessors, almost without responsibility... which in bad

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<sup>209</sup> Shaw, *Convicts and the Colonies*, p. 235. Lord Goderich, later Lord Ripon, created the regulations in March 1833.

<sup>210</sup> RB Madgwick, *Immigration into Eastern Australia, 1788 - 1851*, (Longmans, London, 1937), p. 79

<sup>211</sup> West, *History*, p. 138. See also chapter 8 titled 'The Convict Assignment System' in Robson, *History*, p. 187.

<sup>212</sup> Goderich to Arthur, 27 January 1832, CO 280/36, p. 12.

hands facilitates its abuse, also exposes to suspicion even the most perfect impartiality and fairness'.<sup>213</sup>

After 1831, Lord Goderich's new land policy reflected the social theory of Edward Gibbon Wakefield, a humanitarian author and social commentator who proposed to channel England's excess labour and capital to the Australian colonies. Wakefield argued that New South Wales possessed a 'superabundance of land'<sup>214</sup> waiting to be exploited, and could be called upon to relieve England of its redundant 'middle class' population. Wakefield envisaged a 'regulated pattern' of settlement across the countryside, supported by an emigrant labour force working for hire. No longer would the colonists have to depend upon the convicts for their cheap labour; writing in 1829 under the pseudonym of a settler living in Sydney, Wakefield declared that

'if for every acre of land that may be appropriated here, there should be a conviction for felony in England, our prosperity would rest on a solid basis; but, however earnestly we may desire it, we cannot expect that the increase of crime will keep pace with the spread of colonization'.<sup>215</sup>

In particular, Wakefield advocated the sale of wastelands at a 'sufficient price', high enough to prevent labourers and ex-convicts becoming landholders too soon, but low enough to attract capitalists and 'emigrants of substance' to New South Wales.<sup>216</sup> Wakefield proposed a uniform, fixed price for all land sales in the colony, 'irrespective of quality or location'<sup>217</sup>, and to be determined by the particular circumstances of the settlement.<sup>218</sup> Wakefield envisaged that revenue derived from sales would be used to finance emigration from England, and so assure a steady flow of labourers to the colony, and ultimately, investors and capitalists.<sup>219</sup> According to historian Peter Burroughs however, Wakefield seriously under-estimated the peculiar nature of sheep farming in the

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<sup>213</sup> *Ibid.*

<sup>214</sup> P Burroughs, *Britain and Australia*, (Clarendon Press, Oxford, 1967), p. 17.

<sup>215</sup> *Ibid.*, p. 19.

<sup>216</sup> *Ibid.*, p. 19.

<sup>217</sup> *Ibid.*, p. 26.

<sup>218</sup> *Ibid.*, p. 24.

<sup>219</sup> *Ibid.*, p. 27.

colonies, which required great tracts of land and cheap, unskilled shepherds and labourers. Besides, much of the most fertile holdings had already been granted away by successive colonial governors<sup>220</sup>, and in 1831, Arthur reported that 'unfortunately, all the available land [in Van Diemen's Land] has been disposed for a considerable time'.<sup>221</sup>

In any event, the introduction of sales represented a frontal challenge to the whole idea of penal colonization in Van Diemen's Land, which was essentially based on the assignment of convicts to the settlers. The government supplied the labour, and the settlers acted like unpaid overseers in Arthur's great open-air prison. Conversely, land sales supported emigration to the colony, and with it, competition with the convicts for employment.<sup>222</sup>

Furthermore, Arthur and his immigration committee<sup>223</sup> were alarmed by Goderich's proposal to impose a tax of 10s on any convict engaged in the service of the colonists. The Colonial Office anticipated that revenue from the sale of land would not be enough to support extensive emigration to Australia, and that some aid from colonial funds was necessary for its success.<sup>224</sup> Writing to Goderich in June 1832, Arthur declared that

'not only is a general tax upon convict servants objectionable, on the grounds that it will be a direct charge upon produce; - but, great as are the advantages which the community, collectively, derive from their labour, it cannot be denied that, individually, they are weighed down with the trouble and anxiety of managing this class of servant... I am

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<sup>220</sup> *Ibid.*, p. 90. According to Burroughs, some two million acres had been alienated by grants, sales and leases in Van Diemen's Land before 1832 (p. 92).

<sup>221</sup> *Ibid.*, p. 92.

<sup>222</sup> *Ibid.*, p. 94.

<sup>223</sup> Arthur to Goderich, 28 June 1832, CO 280/34, p. 257. The Committee comprised Joseph Logan, Jocelyn Thomas, Matthew Forster, George Frankland, Josiah Spode, Adam Turnbull and Roderic O' Connor. The Committee reported: 'nethertheless great as the advantages are which settlers enjoy by the assignment of convicts, they ought not in general to be charged for their labour, for it is to be remembered that these men are for the most part ignorant of country labour and are almost always dissolute and idle, they have therefore a long and we may add an expensive apprenticeship to serve before they are rendered trustworthy and efficient, and when they have become so they do not remain in the serve of the settlers to whom they have been assigned but are indulged with tickets of leave or are admitted to the Field Police'. See Arthur to Goderich, 31 July 1832, CO 280/34, pp. 344.

<sup>224</sup> H King, *Richard Bourke*, (Oxford University Press, Melbourne, 1971), p. 208.



constrained to differ with... the proposition of having to recourse to a tax upon convict servants generally'.<sup>225</sup>

In New South Wales too, Governor Darling and his successor, Sir Richard Bourke, also opposed the measure on the basis that it would contribute to a decrease in production.<sup>226</sup> Like Arthur, Bourke was concerned that his patronage had been eroded by the new Ripon Regulations and the 'collection of rents, debt and taxes'<sup>227</sup>, and regretted that he had 'almost wholly [been] deprived of those means of influence which in former times were exerted with effect for the support of authority'.<sup>228</sup> Bourke indicated that the economy was already distressed, and that the tax would impede efforts to reform the convicts. Meanwhile the penal character of the colony of Van Diemen's Land was constantly asserted in Arthur's protestations:

'The discipline and control of the convicts in Van Diemen's Land is carried, perhaps to a greater degree, than could ever have been contemplated: - the colony may be traversed from one end to the other, by day or by night, with the most perfect safety, - and the community, without reference to political feeling, affords the government steady support in upholding a system, which they have the good sense to perceive is intimately binded with their personal security'.<sup>229</sup>

While Downing Street deliberated over the new regulations, a mood of uneasiness swept over Van Diemen's Land.<sup>230</sup> Goderich was not insensitive to the situation in the colony. Writing to Arthur in 1832, he declared:

'The prosperity, nay almost the existence of the colony, is now dependent upon the continuance of the present system of transportation; and as it is a subject of serious doubt whether that system accomplishes the object for which it is intended, namely the

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<sup>225</sup> Arthur to Goderich, 28 June 1832, CO 280/34, p. 259.

<sup>226</sup> King, *Bourke*, p. 208.

<sup>227</sup> As quoted in Shaw, *Convicts and the Colonies*, p. 235.

<sup>228</sup> *Ibid.*, p. 235.

<sup>229</sup> Arthur to Goderich, 28 June 1832, CO 280/34, p. 259.

<sup>230</sup> West, *History*, p. 119.

repression of crime in this country, and whether it therefore can be expected permanently to be continued; and as it is at all events evident, that the number of labourers thus furnished, is daily becoming more and more inadequate to the wants of the colony, no time should be lost, in adopting measures to supply the deficiency.'<sup>231</sup>

The constraints of the Ripon Regulations contradicted Bigge's theory of incorporating settler productivity with the positive assignment of convicts, and while Goderich acknowledged that 'in order to increase the export of wool, it is only required that labour should be rendered more abundant and less expensive', he could no longer 'admit that any degree of respectability entitles a settler to derive a great pecuniary advantage from the public'.<sup>232</sup> Goderich explained to Arthur that he was acting in the interests of the colony 'in obtaining an accession to its labouring population', and that he was not just looking for economic and social relief in Britain as some commentators in the colony believed.<sup>233</sup> With respect to the tax on convicts, Goderich argued that he could not see why masters of good mechanics should derive 'the great pecuniary advantage they now do from their services' without some form of financial return for the government.<sup>234</sup> Similarly, Goderich could see no reason why such a tax should interfere with the 'maintenance of the proper discipline amongst the convicts', and that on the contrary, he thought it would promote it.<sup>235</sup> In any case, argued Goderich, 'in Van Diemen's Land the money to be received will be applied in a manner yet more directly conducive to the interest of the settler, namely by making provision for the creation of an industrious population, which alone can give value to his land'.<sup>236</sup>

Frustrated that the Colonial Office appeared to have overlooked the inevitable displacement of the convicts in all of this, Arthur informed the Secretary of State that he could not understand, except by experience, 'the really hostile feeling that would arise if the inhabitants of Van Diemen's Land came to believe that the revenue of the colony was

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<sup>231</sup> Goderich to Arthur, 27 January 1832, CO 280/33, p. 6.

<sup>232</sup> *Ibid.*

<sup>233</sup> *Ibid.*

<sup>234</sup> *Ibid.*

<sup>235</sup> *Ibid.*

<sup>236</sup> *Ibid.*

to be expended on the maintenance and discipline of the convicts with a view believed by the settlers to be more to British interests than colonial ones'.<sup>237</sup> Such had been the policy of Arthur: in order to render transportation secure it was necessary to keep the settlers attached to it by economic interest.<sup>238</sup> Arthur advised his political masters to reconsider their new thoughts on colonisation, else risk devaluing the services of the convicts:

'I must, however, again return to one main point, and for which Your Lordship will find many expedients which do not readily occur to mind that, whatever aid this colony gives, sending its limited capital out of the territory must be, by all means, steadily and systematically avoided - or - we are ruined!'<sup>239</sup>

Arthur told Goderich that Downing Street's 'grand undertaking' would be attended to with many difficulties, suggesting that the emigrant labourers would 'be a burden upon this community', and that 'some worthless characters' would be thrust upon the 'liberality of the government'. Arthur warned Goderich that the 'young colony', which was 'based on a convict population', was liable to 'great and sudden changes from very minute causes', and that he was obliged to be 'guarded in every act' which affected the community. Alluding to the immigration of free labourers, and imposing a tax on the convicts, Arthur urged the Secretary of State to avoid any 'unpopular measures' unless they were absolutely necessary, and to postpone his proposals until a time when public opinion had subsided.<sup>240</sup> Goderich attempted to pacify Arthur by assuring him that only the best characters would be selected for emigration, and philosophised that

'it has been found that the idle and worthless paupers have frequently been rendered so by the hopelessness of their situation, and when enabled to find constant employment at fair wages, a great change has almost invariably taken place in their conduct'.<sup>241</sup>

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<sup>237</sup> Robson, *History*, p. 310.

<sup>238</sup> Forsyth, *Convict System*, p. 121.

<sup>239</sup> Arthur to Goderich, 28 June 1832, CO 280/34, p. 262.

<sup>240</sup> *Ibid.*, p. 260.

<sup>241</sup> Goderich to Arthur, 27 January 1832, CO 280/33, p. 8.

While Arthur had earlier supported the proposition that crime was a derivative of 'economic hardship', he was reluctant to apply it to the case for pauperism. Meanwhile, the success of his integration of convicts into the community in the present system had, he felt, been dramatically demonstrated by their participation in the "black line" operations against the aborigines, an achievement for which he had been publicly thanked. In 1828, the Executive Council of Van Diemen's Land issued a proclamation for the 'purpose of expelling the aborigines from the settled districts', in a bid to put an end to the 'numerous murders and robberies which had lately been committed upon the white inhabitants'.<sup>242</sup> Under increasing pressure to render protection to the settlers from all sides, Arthur had declared that 'the necessity of taking some decisive step becomes every day more apparent, as the settlers advance on the favourite haunts of the natives'.<sup>243</sup> Roving parties were formed to search and capture the natives, though reports of public atrocities committed by both sides increased in frequency.<sup>244</sup> Finally, in October 1830, Arthur succumbed to public pressure and devised a plan to capture the natives and drive them onto Tasman's Peninsula.<sup>245</sup> A "black line" advanced across the width of the colony, forming a cordon that would hopefully push the aborigines who escaped captivity towards the Peninsula. There was no shortage of volunteers<sup>246</sup>, and convicts stood alongside soldiers and settlers in a united front against the pursued. After nearly two months of searching, the government reported that the expedition had been 'attended with full success'<sup>247</sup>, although in reality, it succeeded in capturing only one man and a boy.<sup>248</sup> On the other hand, five soldiers were killed in accidents or from exposure, but only one convict absconded.<sup>249</sup> For some of the settlers however it had been a great and exciting event, and one commentator wryly remarked that 'the whole body of colonists had turned crazy in consequence of the complete failure of this grand undertaking'.<sup>250</sup> The

<sup>242</sup> Extract from the Minutes of the Executive Council, 30 October 1828, as quoted in C Turnbull, *Black War*, (Sun Books, Melbourne, 1974), p. 90.

<sup>243</sup> Arthur to Murray, 10 January 1828, as quoted in AGL Shaw, *Copies of all Correspondence on the Subject of the Military Operations Lately Carried on Against the Aboriginal Inhabitants of Van Diemen's Land*, (Tasmanian Historical Research Association, Hobart, 1971), p. 3.

<sup>244</sup> Robson, *History*, p. 213.

<sup>245</sup> Turnbull, *Black War*, p. 119.

<sup>246</sup> It was reported that 3000 persons were in the field. See Turnbull, *Black War*, p. 118.

<sup>247</sup> *Ibid.*, p. 119.

<sup>248</sup> Robson, *History*, p. 220.

<sup>249</sup> *Ibid.*, p. 220.

<sup>250</sup> Melville, *History*, p. 120.

conciliatory 'friendly missions' of George Augustas Robinson followed, and many aborigines were induced to come out into the open and removed to settlements in Bass Strait in the north and the D'Entrecasteaux Channel in the south, where they were to be 'civilized' by their captors.<sup>251</sup> Despite its anomalous outcome, the "black line" represented a 'unique cooperation' of settlers and convicts, and boosted the governor's popularity in the colony. Writing to Murray in November 1830, Arthur proudly declared:

'All classes of the community have manifested the greatest alacrity and zeal in seconding the measures of the government on this occasion. The settlers have come forward with their personal exertions and the assistance of their servants, whilst the gentlemen of the towns have volunteered to do the duty of the garrison, in a manner which demonstrates how much importance is attached to the measures directed for the protection of the lives and properties of the settler, and how cordially and entirely the whole community unite with the earnest desire of the government'.<sup>252</sup>

And later, Arthur proudly informed the governor of New South Wales that the 'unanimity between the government and the colonists is so general as to afford me every ground to hope for all the support which can be reasonably expected under an emergency'.<sup>253</sup>

The whole "black line" episode however, if illustrative of Arthur's case, was in no way to abate the new threat immigration posed to the assignment system. Already distracted

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<sup>251</sup> Shaw, *Copies of all Correspondence on the Subject of the Military Operations Lately Carried on Against the Aboriginal Inhabitants of Van Diemen's Land*, p. 1.

<sup>252</sup> Arthur to Murray, 20 November 1830, as quoted in Shaw, *Copies of all Correspondence on the Subject of the Military Operations Lately Carried on Against the Aboriginal Inhabitants of Van Diemen's Land*, p. 1.

<sup>253</sup> Arthur to Bourke, 5 January 1832, CO 280/33, p. 52. The emergency which he was alluding to however was not against the aborigines, but against the convicts in the event of a revolt. Later, Arthur's successor, Sir John Franklin, sent a detachment of soldiers to Port Arthur after the Commandant, Captain Booth, became lost in the bush. Left without a strong leader, Franklin's wife recorded in a letter to her sister that there was a fear that the convicts might rise 'en masse under such favourable circumstances'. There was no uprising however then, or during Arthur's administration'. See Lady Franklin to Mrs Simpkinson, 21 June 1838, RS 16/8/1.

from his primary role as gaoler by the aboriginal crisis<sup>254</sup>, immigration once again threatened his carefully built up arrangements. If he were to wage a successful campaign against this new impending crisis, he would again have to promote a united front with the settlers against emigration.

Arthur's protests failed to stem the arrival of Goderich's free emigrants, whose interests ran in a direction entirely opposite to Arthur's penal policy. Four members<sup>255</sup> of the Legislative Council of Van Diemen's Land protested against the increased numbers of immigrants arriving in the colony, declaring that 'the support of 10,000 prisoners, without expense to England, was a sufficient benefit for a colony to confer'. They also contended that the expenditure of the land fund outside of the colony was to 'complete the mischief resulting from the cessation of grants, the calamities of which it was fearful to anticipate'.<sup>256</sup>

With the introduction of Goderich's assistance scheme after 1831, the number of free immigrants arriving in the colony increased rapidly due to the introduction of bounties and public subsidies.<sup>257</sup> In 1832, 553 immigrants, assisted by the home and colonial governments, arrived in the colony, and by 1835, a total of 2041 free persons relocated from Britain under the program of assisted emigration.<sup>258</sup> In comparison, 3926 unassisted immigrants arrived in the colony between 1832 and 1835.<sup>259</sup> Simultaneously, 3626 convicts poured into Van Diemen's Land between 1831 and 1832 alone, only half of whom passed immediately into the private service of the settlers.<sup>260</sup> Wholesale saturation

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<sup>254</sup> Turnbull, *Black War*, p. 78. Ironically for Arthur, the abatement of the crisis may have even made immigration more attractive!

<sup>255</sup> Charles Swanston, Charles McLachlan, Richard Willis and John Kerr. See West, *History*, p. 587, note 135.

<sup>256</sup> *Ibid.*, p. 120.

<sup>257</sup> NG Butlin, *Forming a Colonial Economy*, (Cambridge University Press, Cambridge, 1994), p. 19. As stated earlier in this chapter, some of the expenses incurred by free settlers immigrating to Van Diemen's Land were met by the government using funds from the sale of land. For a detailed examination of the British emigration system as a whole, see O MacDonagh, *A Pattern of Government Growth 1800 - 60*, (MacGibbon and Kee, London, 1961). Van Diemen's Land was only one of many destinations for Britain's emigrants.

<sup>258</sup> Madgwick, *Immigration*, p. 224.

<sup>259</sup> *Ibid.*, p. 224. Generally, those immigrants who did not require assistance came with substantial means. See Robson, *History*, p. 161,

<sup>260</sup> RM Hartwell, *Economic Development of Van Diemen's Land, 1820 - 1850*, pp. 70-71.

however was averted by the growing popularity of the new settlement at Port Phillip, where the population had increased five fold in 1835, the bulk of its initial population emigrating from Van Diemen's Land without government sponsorship.<sup>261</sup>

With an increasing supply of free labour in Van Diemen's Land after 1832, there was a corresponding decline in the demand for the services of the convicts. To make matters worse for Arthur, the employment of prisoner 'artisans'<sup>262</sup> by the local government was discontinued by the Crown, and he was instructed to assign them to private masters, and to contract for public works, thereby saving the home government any increase in expenditure.<sup>263</sup>

Meanwhile Arthur's sensitivities were further aggravated by Bourke, who advised the lieutenant governor that he had taken up his appointment as governor of New South Wales on 3 December 1831.<sup>264</sup> Bourke expressed his 'surprise' that he did not find in New South Wales 'any official information respecting the government' of Van Diemen's Land, and that he required Arthur to 'communicate by letter any particulars of the state of Van Diemen's Land' that he deemed 'worthy of notice'.<sup>265</sup> He also advised Arthur that he intended to decrease the number of troops in the colony, despite the increasing demand of the penal establishments and road gangs.<sup>266</sup>

His authority already weakened by Goderich's new land policy, Arthur was annoyed by Bourke's assumption that the governor of Van Diemen's Land had even to report to the governor of New South Wales at all. Arthur wrote:

'I have never considered myself in the slightest degree responsible to Governor Darling, or accountable to him in any manner for the civil government of the colony during his absence from it: - even prior to the separation of the colonies, I thought this point had

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<sup>261</sup> Burroughs, *Britain*, p. 164. See also chapter 4.

<sup>262</sup> Artisans were skilled convicts, usually trained in some form of trade.

<sup>263</sup> John Montagu, later Colonial Secretary of Van Diemen's Land, advocated this measure when he visited England in 1830. See chapter 3.

<sup>264</sup> Bourke to Arthur, 17 December 1832, CO 280/33, p. 51.

<sup>265</sup> *Ibid.*

<sup>266</sup> *Ibid.*

been clearly and distinctly set at rest by the despatch addressed by Lord Bathurst in 1823 to Sir Thomas Brisbane'.<sup>267</sup>

Arthur explained that he had 'readily and cheerfully communicated to [Governor Darling] the results of long experience and unwearied labour in the management of the convict population, conceiving that the measures which had proved so advantageous [in Van Diemen's Land] might operate with equal benefit in New South Wales. But as to making official reports to him', concluded Arthur, a 'private note' had been 'the best means of preserving the best understanding between the two colonies'.<sup>268</sup>

Arthur was also aggrieved that Bourke intended reducing the number of soldiers stationed in Van Diemen's Land, and that the force already there was

'inadequate to afford protection to the widely displaced settlements of His Majesty's subjects in this colony, and, at the same time to overbore the unruly convicts in the chain gangs and at the penal settlements'.<sup>269</sup>

His problems with Bourke aside, at least there was also some good news; writing in July 1832, it pleased Arthur that Goderich had decided against applying the tax on the convicts:

'I am most gratified to find Your Lordship does not insist upon a general tax being imposed, indiscriminately, upon all convicts'.<sup>270</sup>

By 1833 however, an economic sunset appeared to loom over Arthur's system of convict management. According to historian RM Hartwell, 'there was a plethora of labour in the colony'<sup>271</sup>, and early in 1834 the free mechanics themselves petitioned Arthur to cease the

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<sup>267</sup> Arthur to Howick, 5 January 1832, CO 280/33, p. 52.

<sup>268</sup> *Ibid.*

<sup>269</sup> *Ibid.*

<sup>270</sup> Arthur to Goderich, 31 July 1832, CO 280/34, p. 326.

<sup>271</sup> Hartwell, *Economic Development*, p. 75.



assignment of convict mechanics to master tradesman<sup>272</sup>, although Arthur had already opposed the measure on the basis that the 'high rate of wages would subvert the design of transportation. The employer', he despaired, 'would indulge the workman, and to obtain their full strength supply the means of sensual gratification'.<sup>273</sup>

Arthur investigated the possibility of expanding the role of the Van Diemen's Land Company<sup>274</sup> in his convict system in an effort to absorb the expanding prisoner population. Writing to Hay in April 1833, Arthur suggested that if the government was permitted to increase the number of settlers residing on the Company's land holdings

'it will enable the Company by the settlement of respectable persons upon its lands to assist with other grantees in the great business of punishing and reforming the convicts, and thus a demand will be created for some part of the great increase of transports which I trust will soon arrive and for which I have applied so earnestly under the conviction that, transportation is or may be made, the most effectual cause of the prevention of crime'.<sup>275</sup>

So enthusiastic was Arthur to secure this means of employing the convicts that he even suggested it would allow the home government to safely send an even larger contingent of convicts to Van Diemen's Land to be 'made to suffer its discipline and privations'.<sup>276</sup> Arthur continued:

'For the present supply [of convicts] no additional demand is necessary... But did an addition of from 5000 to 10,000 arrive, it is evident that the tenanting of the Company's lands would be a most effective step in aid of the plans of the local government'.<sup>277</sup>

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<sup>272</sup> *Ibid.*, p. 75.

<sup>273</sup> West, *History*, p. 119.

<sup>274</sup> The Van Diemen's Land Company was a large agricultural venture supported by wealthy investors in England. It was embodied in the Royal Charter on 10 November 1825. It was to be afforded assistance by the colonial government in the form of a land grant of 350,000 acres and labour. See J Duxbury, *Colonial Servitude*, (Monash Publications, Victoria, 1989).

<sup>275</sup> Arthur to Hay, 9 April 1833, CO 280/41, p. 583.

<sup>276</sup> *Ibid.*

<sup>277</sup> *Ibid.*

There is no doubt Arthur tried to make the proposal as attractive as possible to the home government by suggesting that the colony could absorb a further 10,000 convicts. Whether he truly believed Van Diemen's Land could sustain such an increase is speculation, though by his own admissions, the demand for the convicts was 'not so great' in 1835. Further, the entire population of Van Diemen's Land was only 34,450 in 1833, of whom 14,990 were convicts, and up until that time, the greatest population increase in any one year, including both free and convict, was only 4239. It is noteworthy that Arthur's successor also tried to alleviate the pressure of a growing number of convicts in the colony by recommending they could be usefully employed on projects like building roads to the estates of the Van Diemen's Land Company, although ultimately the proposal amounted to nothing.<sup>278</sup> However, as will be seen, under special advice, such an increase in arrivals was eventually to prove to be acceptable to His Majesty's Government.

While he waited for a decision from London, Arthur also considered the Port Phillip District<sup>279</sup> as a means of dispersing his convict population. On 1 October 1835, Arthur, although by now aware of Governor Bourke's proclamation reserving the new colony of Port Phillip as New South Wales territory and citing all those already occupying land there as 'trespassers', wrote to Lord Glenelg, now Secretary of State at the Colonial Office, suggesting that 'considerable advantages would accrue from giving the Supreme Court of Van Diemen's Land a concurrent jurisdiction [in Port Phillip] with that of New South Wales'.<sup>280</sup> At the same time, Arthur had been involved in protracted negotiations with the Henty family<sup>281</sup>, a prominent farming identity in Van Diemen's Land, as to recognition by the colonial government of their right to acquire land at Port Phillip<sup>282</sup>, and also urged that the Van Diemen's Land Company be allowed to compensate itself with territory there. According to historian Henry Turner, Arthur 'undoubtedly favoured the proposal as strongly as his official position would allow him. It was evident too, from the tenor of his despatch', continued Turner, 'that he was not without some expectation of

<sup>278</sup> Shaw, *Convicts and the Colonies*, p. 280.

<sup>279</sup> Now the state of Victoria.

<sup>280</sup> CP Billot, *The Life and Times of John Pascoe Fawkner*, (Hyland House, Melbourne, 1985), p. 113.

<sup>281</sup> The Henty family emigrated from England with a great deal of wealth, and were pioneer settlers at Portland in the Port Phillip District of New South Wales, and Van Diemen's Land.

<sup>282</sup> HG Turner, *A History of the Colony of Victoria*, (Longmans Green and Co., London, 1904), p. 82.

extending the sphere of his own importance by acquiring a sort of supervision of the proposed new settlement, as an appendage of Van Diemen's Land.<sup>283</sup> Similarly, it was also a means of 'drafting off' part of his 'burgeoning convict population':

'Convicts holding tickets of leave who have served with good conduct for a period which renders them eligible for emancipation might obtain that indulgence on condition of residing in southern Australia - a measure which would be advantageous in drafting off part of our convict population, and thereby making room for the usual succession of transported felons to be certainly punished and probably reformed in Van Diemen's Land'.<sup>284</sup>

Unfortunately for Arthur, Sir George Grey, Under Secretary of State at the Colonial Office, saw no 'sufficient grounds to warrant the admission of the Henty's claim' or any other from Van Diemen's Land for that matter<sup>285</sup>, and the subject was closed. Less than twelve months later however, the Secretary of State, Lord Glenelg, admitted that it had been impossible to 'counteract dispersion' at Port Phillip, and in April 1836 it was decided to formally recognise the settlement, opening the way for a rush of settlers to stake claims in the territory.<sup>286</sup> Three years later, Arthur's successor, Sir John Franklin, was unable to dissuade many skilled labourers from going to Port Phillip, which along with the mass movement of livestock and property, subsequently depressed the Van Diemen's Land economy (until 1841 when economic depression at Port Phillip momentarily deferred the emigration of labour from Van Diemen's Land).<sup>287</sup>

Back in Van Diemen's Land, there was a fear that the sale of land would end the emigration of the small respectable farmers from Britain 'whom free grants had attracted to the colony and who were as a class very suitable employers of convict labour and executives of the regulations of the assignment system'. According to Forsyth, they were

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<sup>283</sup> *Ibid.*, p. 83.

<sup>284</sup> M Bassett, *The Hentys*, (Melbourne University Press, Melbourne, 1955), p. 288.

<sup>285</sup> Turner, *Victoria*, p. 85.

<sup>286</sup> Burroughs, *Britain*, p. 166.

<sup>287</sup> Shaw, *Convicts and the Colonies*, p. 279.

the 'backbone of transportation as Arthur conceived it'.<sup>288</sup> Nevertheless, the tide of events was running against him; a commission, termed the Commissioners for Emigration, was appointed by the home government to carry out Goderich's regulations<sup>289</sup>, and it was determined by the Colonial Office to remove that element of the population from England which the colonies might employ, and they themselves might spare.

However, in what Forsyth describes as a 'master stroke', Arthur resolved to stand against the flood and 'manfully employed the last hours of his patronage' by granting away 205,000 acres of land in 1831<sup>290</sup>, most of it in extensions to existing grants.<sup>291</sup> In comparison, only 8660 acres were granted in 1835, when the system of granting lands at quit rent was finally terminated.<sup>292</sup> Alternatively, AGL Shaw argues that Arthur did not 'evade' his instructions by 'ill advised generosity in 1831', but granted land at the same rate as he did in 1829, and in a similar proportion to grants in New South Wales for the same period. In any case, Arthur was only following instructions, taking advantage of Goderich's allowances of grants to those settlers whom positive promises had been made.<sup>293</sup> The effect was that between 1828 and 1835, 760,000 acres were granted by Arthur, while acres sold only amounted to 241,000 acres.<sup>294</sup> In June 1832, Arthur reported that there was only £12,362 in the colonial treasury on account of land sales<sup>295</sup>, while a passage to Sydney from England cost upwards of £40 per emigrant.<sup>296</sup> The measure pleased those settlers whose existing grants were further extended, and aided in the prolongation of the assignment system, albeit briefly. Inevitably, no scheme of Arthur's was able to stem the 'quickenings interest in England in emigration'<sup>297</sup> and transportation, which ultimately contributed to the argument against convict assignment.

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<sup>288</sup> Forsyth, *Convict System*, p. 120.

<sup>289</sup> West, *History*, p. 120. See also Madgwick, *Immigration*, p. 93.

<sup>290</sup> Forsyth, *Convict System*, p. 120.

<sup>291</sup> Hartwell, *Economic Development*, p. 32. Hartwell describes it as 'sabotage'.

<sup>292</sup> *Ibid.*, p. 45. See also West, *History*, p. 115.

<sup>293</sup> *Ibid.*, p. 45.

<sup>294</sup> Forsyth, *Convict System*, p. 120.

<sup>295</sup> Arthur to Goderich, 28 June 1832, CO 280/34, p. 261.

<sup>296</sup> Burroughs, *Britain*, p. 62.

<sup>297</sup> Hartwell, *Economic Development*, p. 16.

After 1833, 'the high value of prison labour was reduced'<sup>298</sup>, and fewer colonists depended upon government favour for their livelihood. The new immigrant laborers formed an intermediate or middle class, which resented Arthur's autocratic rule and penal politics.<sup>299</sup> Arthur foresaw all of this; he complained about the lack of care taken by the home authorities in selecting the emigrants<sup>300</sup>, and that many showed no inclination to purchase land.<sup>301</sup> Inevitably, the sale of land to smaller landholders was never great, and in 1835, contemporary commentator and government oppositionist Henry Melville protested that 'those 20,000 acre gentry' were acquiring too much land.<sup>302</sup> Similarly, there was a growing class that had no direct interest in employing the convicts, having been excluded from owning land and subsequently having no need for their labour.

The sudden increase in free holdings after 1831 gave some temporary respite. Contrary to initial concerns about the practicality of the Ripon Regulations, sheep farming was an industry particularly suited to political conditions which made large holdings easy to acquire and where cheap convict labour was readily employable.<sup>303</sup> Wool was profitable, and led Arthur to declare that 'attention [was] given to wool, rather than to corn fields'.<sup>304</sup> He diverted much of his redundant convict population to the country and the unsettled districts, pleasing many of his wealthy supporters.<sup>305</sup> While the fortunes of some were safe for a time, most of the new immigrants, having been precluded from land ownership, preferred urban work over country living, and in a short time the majority of the free population was concentrated in Hobart and Launceston.<sup>306</sup> Consequently, finding employment became increasingly difficult for the bond and free alike. According to West, 'these events revolutionised the social state of the colonies'.<sup>307</sup> The free worker found convictism an obstacle to his advancement; 'it depressed his wages and

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<sup>298</sup> West, *History*, p. 455.

<sup>299</sup> *Ibid.*, p. 455.

<sup>300</sup> Madgwick, *Immigration*, p. 113.

<sup>301</sup> *Ibid.*, p. 81. According to historian Hazel King, Governor Bourke and the colonists of New South Wales also complained of the lack of care taken in selecting suitable assisted emigrants (King, *Bourke*, p. 209).

<sup>302</sup> Hartwell, *Economic Development*, p. 32. This was the Colonial Office plan (p. 36).

<sup>303</sup> *Ibid.*, p. 122.

<sup>304</sup> *Ibid.*, p. 123.

<sup>305</sup> *Ibid.*, p. 87.

<sup>306</sup> *Ibid.*, p. 87.

<sup>307</sup> West, *History*, p. 122.

undermined his position'. As the patronage of the governor ceased to be considerable, having no recourse to land grants, and no colonist was a lover of 'unprofitable despotism'<sup>308</sup>, trial by jury and legislative assemblies 'found earnest advocates where', according to West, 'they had often been mere rallying points of personal discontent.'<sup>309</sup>

In 1834 Arthur also became embroiled in a serious conflict with William Bryan<sup>310</sup>, a large property owner with influential connections in England. In November 1833, Samuel Arnold, a convict herdsman employed by Bryan, was convicted of cattle stealing and sentenced to death, though Bryan declared that the facts of the case were obtained by intimidation, and a hope of reward for the convict witnesses.<sup>311</sup> The presiding police magistrate, Captain William Lyttleton<sup>312</sup>, who committed Arnold for trial, alleged Bryan was equally guilty, and was publicly heard to declare that Bryan should be standing in Arnold's stead.<sup>313</sup> Bryan demanded an apology from the Lyttleton, and complained to the governor that he had been improperly treated and that his character had been defamed. Having reviewed the case as requested, Arthur concurred with Lyttleton, and dismissed Bryan from his office as Justice of the Peace and recalled all of his assigned servants, allegedly at the peak of the harvest and shearing season.<sup>314</sup> Having complained about this to Arthur, Bryan was further aggrieved when the Chief Justice of Van Diemen's Land, John Lewes Pedder<sup>315</sup>, refused to allow a civil jury of twelve to sit in judgement over Bryan's civil action against Lyttleton and the government for withdrawing his servants.<sup>316</sup> Bryan alleged that Pedder withheld his right to have the action heard before a civil jury of

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<sup>308</sup> *Ibid.*, p. 136.

<sup>309</sup> *Ibid.*, p. 122.

<sup>310</sup> Robson, *History*, p. 296. See also West, *History*, p. 128, and *ADB*, vol 1, p. 172.

<sup>311</sup> Melville, *History*, p. 176.

<sup>312</sup> Contemporary historian, Henry Melville, wrote that Lyttleton was a 'personal enemy' of Bryan (see Melville, *History*, p. 175).

<sup>313</sup> West, *History*, p. 128.

<sup>314</sup> *Ibid.*, p. 128. See also Melville, *History*, p. 177. Arthur later referred to Bryan as a 'wicked man'. See Arthur to Montagu, 4 July 1839, as quoted in ed. CR Sanderson, *The Arthur Papers, Being the Canadian Papers Mainly Confidential, Private and Demi-Official* (University of Toronto Press, Toronto, 1957, vol 2), p. 187.

<sup>315</sup> John Lewes Pedder was born in London in 1797, and arrived in Van Diemen's Land in March 1824 to occupy the position of Chief Justice (he was the only justice at that time!). Pedder was also appointed a member of the Executive and Legislative Councils. Pedder was knighted on the 27 November 1838 (after a recommendation from Arthur's successor, Sir John Franklin), and resigned from the Legislative Council in 1851. After suffering a stroke in 1854, he returned to England in 1856. Pedder died in 1859. See *ADB*, vol 2, p. 320. See also chapter 9 for a discussion about Pedder's allegiances and politics.

<sup>316</sup> Robson, *History*, p. 307.

twelve, and instead appointed two military 'assessors' to determine the action.<sup>317</sup> Having declared that Pedder and his military jurors were tainted by the influence of the local government, Bryan withdrew his action and prepared to return to England in 1835.

Not only was Bryan enraged, seeing the whole episode as a miscarriage of justice, but Arthur's antagonists were similarly inflamed as Pedder, who was also a member of the Executive Council which voted to withdraw Bryan's servants, decided against admitting a jury in the case against the government.<sup>318</sup> The effects of this measure were unsettling for anybody who considered speaking out against the local government, and excited general distrust among some of the prominent (and vocal) colonists<sup>319</sup>, including Anthony Fenn Kemp, Thomas George Gregson, John Dunn and Joseph Tice Gellibrand.<sup>320</sup> In July 1834<sup>321</sup>, an address signed by 37 colonists was presented to Arthur demanding the local government extend trial by jury as it 'obtains in Britain to Van Diemen's Land without any diminution in number'.<sup>322</sup> While there is no evidence that Pedder was in any way influenced by Arthur, it was somewhat disheartening for his critics that Arthur counted the Chief Justice as his 'estimable friend'.<sup>323</sup>

Several months after Bryan's departure for England, where he set about to defend himself and discredit Arthur before the 'Imperial Parliament'<sup>324</sup>, Robert Bryan, William's nephew, was tried in Launceston on two separate indictments of cattle stealing, and later convicted and sent to Port Arthur.<sup>325</sup> Once again, those who ranked among Arthur's opposition thought Robert Bryan was the victim of a conspiracy, and 'meetings to petition London became more frequent, and assumed a more general character'.<sup>326</sup> Henry Melville<sup>327</sup> indicated that some of the meetings rallied to remove 'the degradation and

<sup>317</sup> The 1828 Act allowed for this (see Melbourne, *Constitutional*, p. 160).

<sup>318</sup> In October 1835, Glenelg told Arthur that Pedder must resign from the Executive Council in order to preserve the independence of the judiciary. See Shaw, *Sir George Arthur*, p. 172.

<sup>319</sup> *Ibid.*, p. 130.

<sup>320</sup> *Ibid.*, p. 308.

<sup>321</sup> 14 July 1834.

<sup>322</sup> Arthur replied on 21 July 1835, and a second address was forwarded to the governor on the 23<sup>rd</sup>.

<sup>323</sup> Arthur to WT Parramore, 27 September 1839, *Canadian Papers*, p. 270. See also chapter 8.

<sup>324</sup> *Ibid.*, p. 297.

<sup>325</sup> West, *History* p. 130. Montagu later saw him at Port Arthur. See chapter 3.

<sup>326</sup> *Ibid.*, p. 136.

<sup>327</sup> Melville was editor of the *Colonial Times*, which was critical of Arthur and his government. In 1835, Melville was found guilty of contempt by Chief Justice Pedder in reporting Robert Bryan's trial in the *Colonial Times*, and was jailed for twelve months (see Melville, *History*, p. 221). Later, he completed his

other unspeakable evils arising from the settlement being of a penal nature<sup>328</sup>, and to protest against the 'unwieldy and ill-adapted government' that was stealing the 'bread from their mouths to feed the British convict'.<sup>329</sup> He also stated that there was a fear that the colony would be ruined by the arrival of 'more convicts, more mouths', and that if more transports were to be sent, they should be sent under 'a very different arrangement to that which now exists'.<sup>330</sup> 'The system is founded in error', he declared, 'and its continuance will destroy a colony, which ought to be one of the most thriving of any possessing the British flag'.<sup>331</sup> Melville concluded that the 'check given to emigration by selling land' had left the colonists with a heavy debt, and that the whole of the 'commissariat expenditure goes to pay the foreigner food, for the free and the bond'.<sup>332</sup> Dramatically, Melville referred to the government officers as the 'aristocracy of the place, and treat with haughtiness, any of a different grade to themselves'.<sup>333</sup> He added:

'Those in authority, those living on the vitals of the colony, and their dependents, are naturally opposed to the island being relieved from being a penal settlement, - because should such an event occur, many of the salary men must take to the plough; for the hundred thousand a year levied upon the free colonists and divided among a regiment of government officers, would be reduced to one fourth of that sum.'<sup>334</sup>

To a degree, the colonists were justified in demanding trial by jury; trial by jury in all civil cases had been framed in 1830 by virtue of an Order of Council<sup>335</sup>, though Arthur, who was empowered to introduce trial by jury at his discretion, hesitated in amending the succeeding legislation until November 1834.<sup>336</sup> Trial by military jury in criminal cases continued in its original form until Governor Franklin's Jury Bill was passed in 1840.

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*History of the Island of Van Diemen's Land*, but had to publish it in London because it was so critical of Arthur's Government (see *ADB*, vol 2, p. 221).

<sup>328</sup> Melville, *History*, p. 198.

<sup>329</sup> *Ibid.*, p. 193.

<sup>330</sup> *Ibid.*, p. 194.

<sup>331</sup> *Ibid.*, p. 195.

<sup>332</sup> *Ibid.*, p. 194.

<sup>333</sup> *Ibid.*, p. 193.

<sup>334</sup> *Ibid.*, p. 194.

<sup>335</sup> The Bill was passed on 21 April 1830.

<sup>336</sup> Robson, *History*, p. 307. The Jury Bill was passed on 5 November 1834.



Arthur was apprehensive that 'the abolition [of transportation] would become a popular question'<sup>337</sup>, and worked tirelessly to prevent adding to the causes of complaint which inevitably lessened the value of convict labour.<sup>338</sup> Arthur himself had this continually in mind: 'I may observe', he wrote, in reference to a petition for the abolition of transportation, 'that convict discipline has not been matured abruptly, but gradually during a course of years in which a more systematic scheme of coercion has been brought step by step into effective operation.'<sup>339</sup>

In evidence, Arthur wrote:

'There now exists in Van Diemen's Land a population of between thirty and forty thousand souls, of whom about 17,000 have been convicts, and by far the greater proportion of these... are daily contributing to the commercial importance of the colony, [and] to the wealth of the Empire, while it is equally incontrovertible that their transportation has been no bar to the emigration of the free but rather the means of encouraging and eventually securing it. They are the pioneers who opened the way and made it straight'.<sup>340</sup>

In effect, Arthur acknowledged that while Britain sought punishment and hopefully reformation, the colonial officials and the private sector were at least as much concerned with the economic use of convict labour, which ensured that the colonists remained supportive.<sup>341</sup> Van Diemen's Land was a uniquely integrated society, and progressively, punishment and economic benefit complemented each other in the assignment system.

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<sup>337</sup> *Ibid.*, p. 310.

<sup>338</sup> West, *History*, p. 456.

<sup>339</sup> Shaw, *Sir George Arthur*, p. 92.

<sup>340</sup> Arthur, *Observations*, p. 44.

<sup>341</sup> Butlin, *Forming a Colonial Economy*, p. 123. In 1823, Bathurst wrote that 'His Majesty's Government will never lose sight of the important distinction between the punishment of the convict for the offence which he has committed, and the employment of labour of the convict for the benefit of the colonists. As the first primary object, the utmost care must be exerted that the situation of the convict, when taken off the store by the colonists, must be one of laborious employment, tempered at the same time with every consideration of proper humanity, and with every corrective principle of proper humanity' (see Bathurst to Macquarie, 30 May 1823, *HRA*, III, I, p. 85).

Arthur recognised that many of the settlers were not dissatisfied enough with convict labour to risk the discontinuance of it (they drew up a petition to keep it up), and was unremitting in his efforts to safeguard the system of punishment from criticism.<sup>342</sup> According to Lloyd Robson, much of the opposition that formed against Arthur and became associated with the demands for an alternative form of government, sprang from his 'unremitting efforts to root out illegal practices and to grant land and indulgences on the strictest basis'.<sup>343</sup>

In August 1834, bowing to pressure emanating from the British penal reformers, the Colonial Office had begun in earnest to consider the problem of convict discipline, and by the end of 1835 the Colonial Office was predicting constitutional change, and along with it the spirit of convict transportation. In a despatch to Sir Richard Bourke, governor of New South Wales, Lord Stanley, now Secretary of State at the Colonial Office, explained that transportation and convict punishment was having little effect upon 'their companions in crime' in England upon whom it was intended chiefly to operate, and that instead 'they contemplate their lot against the greater number of prisoners who are assigned to the settlers, and the comparative ease and freedom from restraint which they then enjoy... I have always entertained great doubts as to the efficacy of transportation according to the principle of assignment, which has hitherto been adopted, and that the present mode of dealing with convicts is liable to many objections'.<sup>344</sup> In reply, Bourke welcomed Stanley's misgivings for the system of assignment, commenting in particular that 'the temper, character, station in society of the master, the occupation in which it might be found convenient to employ the servant, and the degree of connection or variance that might happen to subsist between this and his previous habits, have an immeasurable influence over his condition, both physical and mental, which no regulations whatever can anticipate or control'.<sup>345</sup>

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<sup>342</sup> Robson, *History*, p. 310.

<sup>343</sup> *Ibid.*, p. 199.

<sup>344</sup> Stanley to Bourke, 21 August 1833, *HRA*, I, XVII, p. 197.

<sup>345</sup> Bourke to Stanley, 15 January 1834, *HRA*, I, XVII, p. 313.

In a strange twist however, Bourke's primary objection to assignment lay in what historian AGL Shaw describes as 'rarely appreciated'<sup>346</sup> by historians - its effect on the character of the free masters rather than the convicts. In January 1834, Bourke admitted that 'it is undoubtedly true that both [punishment and reformation] are in a great majority of cases obtained by this imperfect and unpromising process'.<sup>347</sup> For the great majority of *settlers* however it was a different story.<sup>348</sup> In a private letter to Howick, Bourke wrote:

'[they] were not perhaps aware amongst other disadvantages accruing to their country from its being a penal station (and I could not put it strongly to them) of the injurious effect upon the disposition and character of many of them and their children arising from the employment of men and women virtually their slaves on their estates and in their houses'.

Bourke explained that his opposition to assignment was based on the demoralising effect it had on the settlers:

'certainly the vices of slave colonies, modified indeed by the state of the law, prevail in New South Wales and it was with a view to the improvement of the settlers of all ranks and classes in habits and morals, and to the final extinction of separate castes in Australia that, as a friend of the colony, I advocated the discontinuance of transportation to that country... I consider however that, as Great Britain has so long made use of Australia for the general convenience of the Empire, that the convenience and interests of the colonists should now be consulted in the manner of discontinuing the practice of transportation'.<sup>349</sup>

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<sup>346</sup> Shaw, *Convicts and the Colonies*, p. 245.

<sup>347</sup> *Ibid.*, p. 245. In 1837 however, Bourke admitted that 'whether in their homes and families they will be found in any proportion free from the grosser vices and criminalities of the lower class of the people, is not so certain; and it is still less so whether any real reformation of heart and disposition has been affected to any considerable extent'. See King, *Bourke*, p. 207. What he meant was that the convicts in assignment did not come into the 'hands of the police' as regularly as those not in assignment (p. 207).

<sup>348</sup> King, *Bourke*, p. 206.

<sup>349</sup> *Ibid.*, p. 207. A memorandum written by Bourke was also included in a despatch to the Colonial Office on transportation and secondary punishment. See Memorandum by Sir Richard Bourke, 26 December 1838, Papers Relating to Transportation and Assignment of Convicts, reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 748.

Bourke did however qualify his statement with an explanation that

'this opinion was not, at the time, nor has it since, been sustained by the approving voice of any large number of the settlers'.<sup>350</sup>

While Downing Street listened to Bourke, it was more concerned with the ineffectiveness of assignment in deterring criminals in Britain than it was with the 'wealth and happiness'<sup>351</sup> of the colonists. According to historian Hazel King, the home government was critical of the widely dispersed convict population in New South Wales which lessened the government's control over the colonists, and in turn made it difficult to discipline the convicts.<sup>352</sup> The same could not be said of Van Diemen's Land, or so Arthur thought, since the colony and its population was smaller, and it was easier for him to supervise the conduct of his settlers intimately.<sup>353</sup> Unfortunately for Arthur, Downing Street did not differentiate between the two colonies so easily, and Wakefield's principles for utilising the land fund to finance free emigration had at length been accepted and implemented along the same lines in both colonies by the home government.<sup>354</sup>

While Arthur managed to hold on to the 'reins of authority' in Van Diemen's Land, considerable changes transpired in the elder colony, culminating in the end of transportation to New South Wales in 1840. The free population there steadily increased from 46,276 in 1830 to 97,912 in 1838, and the proportion of convicts to free persons decreased during the same period from 40.1 per cent to 37.7 per cent.<sup>355</sup> Not surprisingly, 'the desire to possess free institutions in New South Wales bought the question of transportation to a crisis'; the New South Wales Patriotic Association advocated an 'unrestricted concession of political rights, and suggested the abolition of assignment, the separation of the convict department from the colonial government, and

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<sup>350</sup> *Ibid.*, p. 749.

<sup>351</sup> King, *Bourke*, p. 206.

<sup>352</sup> *Ibid.*, p. 145.

<sup>353</sup> Shaw, *Convicts and the Colonies*, p. 247.

<sup>354</sup> King, *Bourke*, p. 212.

<sup>355</sup> *Ibid.*, p. 212.

the establishment of large gangs, in which labour might be exacted, without partiality'.<sup>356</sup> In Van Diemen's Land too, many of the settlers engaged in a similar protest<sup>357</sup>, but not with the same urgency as that which gripped New South Wales. According to West, 'the hostilities of the day [in Van Diemen's Land] were almost invariably associated with some sense of individual wrong; a grant of land desired by one, was given to another, or a valuable servant denied to one but then assigned to some other.'<sup>358</sup>

Events had transpired in London too, over which Arthur had no control. According to historian RM Hartwell, 'Whitehall's colonial policy was seldom enlightened by well informed determination', but as a rule by opinions circulating at home, 'and it was never modified in the interests of a colonial people', except when their protests rose to fever pitch.<sup>359</sup> It was largely as a result of abuses real or alleged in New South Wales, where the wide dispersal of assigned convicts made control so difficult, that the assignment system came under attack in the mid 1830's.<sup>360</sup> According to Forsyth, the 1838 Select Committee on Transportation was quite satisfied that since the settlers depended upon assignment for their supply of labour, they were entirely dependent on the government and obliged implicitly to obey its commands.<sup>361</sup> It was recognised that systematic colonisation was incompatible with assignment and that transportation to the colonies might be replaced with confinement at home or abroad.<sup>362</sup> Some of the more vocal members of Parliament resolved to abolish transportation altogether, whilst in January 1836, Glenelg notified Arthur that he was to be recalled to England after a twelve-year term of office.<sup>363</sup> The Secretary of State assured the angry governor that his recall was due only to the effluxion of time, after twice the usual term of office, but some, including Arthur, suspected the decision reflected a reaction to the Bryan case, but in any case it was a step in the direction of giving the colonists a more liberal administration.<sup>364</sup> Arthur

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<sup>356</sup> West, *History*, p. 462.

<sup>357</sup> *Ibid.*, p. 135.

<sup>358</sup> *Ibid.*, p. 136.

<sup>359</sup> Hartwell, *Economic Development*, p. 10.

<sup>360</sup> PR Eldershaw, 'The Convict Department', *Tasmanian Historical Research Association*, vol 15, (1968), p. 139.

<sup>361</sup> Forsyth, *Convict System*, p. 110. See also chapter 4.

<sup>362</sup> Ritchie, 'Unclean Thing', p. 151.

<sup>363</sup> Robson, *History*, p. 311.

<sup>364</sup> Shaw, *Convicts and the Colonies*, p. 195.

did not want to go under circumstances that he thought might be misunderstood<sup>365</sup>; angry that some would conclude that William Bryan's charges had had something to do with the recall, Arthur protested that it was a 'slur on his reputation', and an injury to the feelings of the respectable.<sup>366</sup>

'So sudden a recall at a moment when, under the scheming of a small party of discontented persons, statements as false as they are malicious against my government and myself personally are before Your Lordship.'<sup>367</sup>

It was in these circumstances that Arthur was rather surprisingly replaced by a distinguished explorer inexperienced in penal matters, though as historian Kathleen Fitzpatrick observes in her study of Arthur's successor, Sir John Franklin, the ex-governor 'understood the appointment of Franklin as it really was, a gesture, a concession intended to placate, but not to mark any real change of policy.'<sup>368</sup> Historian George Mackaness, in his own study of Franklin, also recorded that the new governor was 'a man more in consonance with the humanitarian and politically liberal ideas of the Grey-Durham-Buller school of politicians', as opposed to Arthur, 'a great but autocratic ruler.'<sup>369</sup>

It would not pay Arthur to continue with his protests back in London however. According to Fitzpatrick, he knew his 'masters well and studied their wishes'<sup>370</sup>; there were other appointments to be had in the colonial service, far away from the penal politics of Van Diemen's Land.

Returning to London in March 1837, Arthur was called to give evidence before the Select Committee on Transportation in June, of which Sir William Molesworth was chairman, 'though nothing he could say on the subject was likely to alter the opinions of

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<sup>365</sup> Robson, *History*, p. 311.

<sup>366</sup> Shaw, *Sir George Arthur*, p. 173.

<sup>367</sup> *Ibid.*, p. 173.

<sup>368</sup> K Fitzpatrick, *Sir John Franklin in Tasmania*, (Melbourne University Press, 1947), p. 19

<sup>369</sup> G Mackenness, *Some Private Correspondence of Sir John and Lady Franklin*, (D.S. Ford Printers, Sydney, 1947), Part 1, p. 8.

<sup>370</sup> Fitzpatrick, *Franklin*, p. 19.

the men who had long since made up their minds.<sup>371</sup> In August 1838, the committee recommended that transportation to New South Wales and the settled districts of Van Diemen's Land should be discontinued; that the assignment system in both colonies should be immediately abolished; and that convicts should be bound to hard labour by being confined in penitentiaries at home and abroad, but not in the districts where there were free settlers.<sup>372</sup>

While the British government procrastinated over the details of the new recommendations, Sir John Franklin was appointed governor of Van Diemen's Land, where the 'chief places of influence and emolument had been filled by the relatives and friends of the late Governor.'<sup>373</sup> Franklin was a distinguished explorer but also inexperienced in colonial (or other) administration, and arrived in the colony only months before a full-scale investigation into the convict system was initiated.<sup>374</sup> To make matters more complicated, 'the officers trained under Arthur acquired his tact, and imbibed his spirit; the least deemed himself something superior to the richest trader, or the most enterprising colonist.'<sup>375</sup> Arthur had always drawn out a 'minute detail of official subordination', and 'the duties prescribed for his officers were defined with laboured exactness, and the reins of control met in his hands.'<sup>376</sup> Thus during the term of his government, Arthur's 'influence was paramount, and inferior functionaries were satellites who obeyed his impulse, or were driven from their sphere'.<sup>377</sup> It remained to be seen whether his successor possessed the same determination and unflinching will.

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<sup>371</sup> Shaw, *Sir George Arthur*, p. 179.

<sup>372</sup> The recommendations of the Committee are discussed at p. 108.

<sup>373</sup> Sir John Franklin, *Narrative of Some Passages in the History of Van Diemen's Land*, (Platypus Publications, Hobart, 1967), p. 7. Sir George Grey announced the appointment in the House of Commons on 13 April 1836. The Committee met for the first time on 14 April 1837.

<sup>374</sup> Shaw, *Convicts and the Colonies*, p. 269.

<sup>375</sup> West, *History*, p. 139.

<sup>376</sup> *Ibid.*, p. 138.

<sup>377</sup> *Ibid.*, p. 140.

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### 'Lacking Judgement, Decision and Firmness'

After leaving the colony, Arthur strongly recommended his closest confidants to his successor, Sir John Franklin.<sup>378</sup> Arthur instilled into his officials a strict code of behaviour that he himself set and practised;<sup>379</sup> he took the personal qualities developed during a military career into the conduct of public affairs. As an army officer he was accustomed to unwavering obedience, and as governor he demanded implicit obedience from his officials. As was common in the colonies, Arthur preferred military men as government appointees, and had advanced his two nephew-in-laws, who were both army officers, to important positions. Some civil appointees were less reliable despite their early promise. He dismissed men like his first Attorney General, Joseph Tice Gellibrand, who showed an 'independent spirit'<sup>380</sup>, his Treasurer, Dr Edward Foord Bromley and Bromley's successor, Rolla O'Ferrall.<sup>381</sup> Others, like the Chief Justice, Sir John Lewes Pedder, were competent and able, but not so wedded to Arthur as to incur any debt of gratitude.<sup>382</sup>

Meanwhile Arthur had a particular bond with his nephew-in-law, John Montagu, who had accompanied him to Van Diemen's Land aboard the *Adrian* in 1824. A year earlier, Montagu had married Jessy, daughter of the governor's sister, Mary, and her husband,

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<sup>378</sup> Franklin, *Narrative*, p. 7. Franklin wrote of Arthur's nephews: 'these gentlemen had been particularly recommended to me, together with several other members of his government, by my predecessor'. Colonel Kenneth Snodgrass acted as interim governor between Arthur's recall and Franklin's arrival in the colony. Notably, Snodgrass also acted as interim governor of New South Wales between December 1837 and February 1838 after Bourke's recall.

<sup>379</sup> Forsyth, *Convict System*, p. 8.

<sup>380</sup> *Ibid.*, p. 5. Gellibrand was appointed Attorney General on 1 August 1823, but soon infuriated Arthur by opposing many of his legal actions, including libel cases against newspaper editors. Gellibrand was also friends with one of Arthur's great critics, Robert Lathrop Murray, who wrote regular newspaper columns discrediting the governor. A committee established by Arthur raised doubts as to the propriety of Gellibrand's conduct and loyalty, and he was suspended from office in 1826. He continued practicing law in Van Diemen's Land, but was later killed by aborigines at Port Phillip in 1837. See *ADB*, vol 1, p. 437.

<sup>381</sup> Robson, *History*, pp. 289 - 290. Bromley and O'Ferrall were dismissed for corruption.

<sup>382</sup> See Chapter 8 for an example of Pedder's independence.



Major General Edward Vaughan Worsley.<sup>383</sup> Arthur was fond of his niece, and asked after her when he returned to London in 1836.<sup>384</sup> Like Arthur, Montagu was a professional soldier with influential patrons apart from his uncle.<sup>385</sup> His father, Lieutenant Colonel Edward Montagu, fought alongside the great army general, Sir Edward Coote, on the coast of Coromandel in 1782<sup>386</sup>, where it was reported that his skill, courage and talents were 'crowned with complete success' during a military engagement, and the thanks of the General were expressed in the strongest sense.<sup>387</sup> Notably, Arthur too had impressed Sir Edward in battle on Walcheren Island in 1809 with his courage and sound judgement, and reports of his 'gallant conduct' were published in general orders.<sup>388</sup> For John Montagu however, such accolades were few and far between. Born in India<sup>389</sup> on 21 August 1797, he was described as 'lacking judgement, decision and firmness' in his early years<sup>390</sup>, and so, ironically, it was decided that he should serve his country in arms and was appointed to an 'ensigncy without purchase' in 1814 aged seventeen years, and served during the Battle of Waterloo in 1815.<sup>391</sup> Following several engagements against the French, Montagu was ordered to the rear of his regiment with a detachment of invalids.<sup>392</sup> Even here he was not immune to problems; shortly after the battle, Montagu was tempted to the gaming table, 'and after some playing, found himself in serious arrears.'<sup>393</sup>

<sup>383</sup> Shaw, *Sir George Arthur*, p. 160. Montagu's lineage dates back to Baron Drogo de Monteacuto of the Norman Conquest.

<sup>384</sup> Arthur to Montagu, 10 March 1840, *Canadian Papers*, p. 458. In this instance he stated: 'with kindest love to dearest Jessy'. And again: 'all are surprised I hear them say from time to time at not hearing from dear Jessy to whom I beg my most affectionate love'. Also, see Arthur to Montagu, 30 December 1839, *Canadian Papers*, p. 371.

<sup>385</sup> Shaw, *Sir George Arthur*, p. 160.

<sup>386</sup> WA Newman, *Biographical Memoir of John Montagu*, (Harrison, 59 Pall Mall, 1855), p. 5.

<sup>387</sup> *Ibid.*, p. 6. Montagu's father was also a Kinsman of the Duke of Manchester. There is no record of the Montagu family private papers. Other historians, notably JJ Breitenbach, have also failed to locate the papers. See JJ Breitenbach, *The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu, 1843 - 1852*, *Archives Yearbook for South African History*, vol II (Government Printer, Cape Town, 1959), preface.

<sup>388</sup> Shaw, *Sir George Arthur*, p. 13.

<sup>389</sup> Montagu's father was serving as a Lieutenant Colonel in the Bengal Army at the time.

<sup>390</sup> Newman, *Memoir*, p. 8. Montagu was educated at Cheam in Surrey, and had one brother, Edward (b. 1796).

<sup>391</sup> *Ibid.*, p. 9.

<sup>392</sup> *Ibid.*, p. 9.

<sup>393</sup> *Ibid.*, p. 10.

In any case, as was not uncommon for someone of Montagu's social standing, the young soldier was promoted to lieutenantancy by purchase in November 1815 and later captain after transferring to the 40th Regiment in August 1823, companies of which were about to go to New South Wales.<sup>394</sup>

It is not clear why Montagu volunteered for the appointment. It may have been that other prospects were more appealing; according to his biographer<sup>395</sup>, 'a long prospect of peace lay before the eye of the young soldier, and the employment of public life to the mere parade which occupies a young officer during a lengthened peace' may have been more attractive.<sup>396</sup> Whatever his motive, Montagu and his new wife sailed in the *Adrian* with Arthur's family and arrived at Hobart town in May 1824.

For Montagu, who was not two years old at the time of his father's death<sup>397</sup>, it was probable that Arthur, who had once declared that 'promotion [was his] idol'<sup>398</sup>, must have bestowed upon his young protégé a sense of responsibility and public service.<sup>399</sup> Indeed, Arthur nominated Montagu his Private Secretary even before they had even reached the colony (22 April 1824), under which designation he discharged the 'threefold duties of Public, Military and Private Secretary'.<sup>400</sup> The Arthur's and Montagu's remained close, living under the same roof at Government House until 1832, when Montagu moved into his new residence at Battery Point. Writing to Bathurst in November 1824, Arthur explained that he 'felt it necessary to appoint a gentleman to fill the office, who was wholly unconcerned with all party questions', and therefore selected 'Captain John Montagu of the 40th Regiment. With this appointment', he continued, 'I have every reason to be perfectly satisfied'.<sup>401</sup>

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<sup>394</sup> *ADB*, vol 2, p. 248.

<sup>395</sup> WA Newman published his biographical memoir of John Montagu on 16 January 1855. Newman acted as Dean of Cape Town and senior Colonial Chaplain at the time of writing the memoir.

<sup>396</sup> Newman, *Memoir*, pp. 11-12.

<sup>397</sup> *Ibid.*, p. 7.

<sup>398</sup> Shaw, *Sir George Arthur*, p. 19.

<sup>399</sup> Later, Adam Turnbull, a colonial official, observed that Sir George's mind was 'much occupied by ambition'. See Lady Franklin to Mrs Simpkinson, 27 January 1843, MS 248/174/1-23

<sup>400</sup> Newman, *Memoir*, p. 13.

<sup>401</sup> Arthur to Bathurst, 28 November 1824, *HRA*, III, IV, pp. 228-9.

As Arthur's Private Secretary, Montagu was early exposed to what Robson describes as the 'smart alecks, the place men, the petty and the very unscrupulous colonists jealously guarding their social status and wealth in Van Diemen's Land'.<sup>402</sup> A more mature and capable Montagu emerged in his new appointment, prompting Arthur to confer upon him the temporary duties of Colonial Secretary in 1832 when Colonial Secretary John Burnett was sick, an office only secondary in importance to the governor himself.<sup>403</sup> Although Montagu was retained in the office of Private Secretary to the governor, Bathurst had overlooked his nomination for Colonial Secretary in 1825.<sup>404</sup> In 1826, Arthur reported that he had appointed Montagu to the Office of Clerk of the Councils after delaying the appointment of John Beaumont because of his connections with the surveyor, George William Evans, who was suspected of improper conduct.<sup>405</sup> Arthur highlighted the importance of the Office of Clerk in a despatch to Bathurst:

'I need not impress upon Your Lordship how painful and distressing it must be to me, for various reasons, to transact the confidential business of the government with Mr Beaumont, for the Clerk of the Executive Council must of course be entirely in the

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<sup>402</sup>Robson, *History*, p. 321.

<sup>403</sup>Arthur to Bathurst, 20 April 1826, *HRA*, III, V, p. 145. Arthur states that Montagu had performed the duties of Colonial Secretary, Private Secretary and Office of the Clerk of Councils for some time. Montagu was not officially made Acting Colonial Secretary until 9 April 1832. The Colonial Secretary was the head of the civil service, and all correspondence relating to the business of government passed through his office. Generally, he was called upon to answer questions in the Councils, to discuss measures and to qualify government policy on behalf of the government. The Colonial Secretary read over most reports addressed to the governor, and attached his own minute marked 'urgent' or 'immediate' (on coloured slips of paper). Having read both the minute and the report, the governor then sent it back to the Colonial Secretary for action. Hence, many reports emanating from the Colonial Secretary's office read: 'I am directed by His Excellency the Governor to inform you....'. See A. Bertram, *The Colonial Service*, (Cambridge University Press, Cambridge, 1930).

<sup>404</sup>Bathurst to Arthur, 2 June 1825, *HRA*, III, IV, p. 279. Bathurst informed Arthur that he had appointed Mr. Dudley Montagu Percival to that office. Percival was unable to accept the office for personal reasons (Bathurst to Arthur, 4 December 1825, *HRA*, III, V, p. 9) and the appointment was instead conferred upon Mr Charles Ellis (p. 9). In March 1826, Bathurst again informed Arthur that Ellis too was unable to fill the situation of Colonial Secretary, and had appointed Mr John Burnett as his replacement (p. 119). Burnett's commission was enclosed with this despatch (p. 120). Goderich did so again in 1832. See p. 82.

<sup>405</sup>The appointment was made on the 22 April 1826. Evans, the surveyor, was accused of misconduct and dishonesty in the disposal of land in the proceeding 12 years. Evans was removed from his office at the end of 1825 and replaced by Edward Dumaesq. For a full account see Robson, *History*, pp. 194-5. Arthur also stated in a second despatch to Under Secretary Hay marked 'Private and Confidential' that John Beaumont, by his education and habits, was totally unsuitable to the office and that it would be an act of 'derangement' to place such confidential documents in his hands (Arthur to Bathurst, 22 April 1826, *HRA*, III, V, pp. 193-4).

confidence of the governor, and have access to all the papers and documents which may become the subjects of private investigation and discussion.<sup>406</sup>

Arthur concluded his despatch by informing Bathurst that he had taken the liberty of appointing another of his nephews, Charles Arthur, to the office of Private Secretary while Montagu performed the duties of Clerk to the Councils.<sup>407</sup> Charles Arthur's appointment however was only a temporary one, and was later filled by William Henry Hamilton, a close friend of Arthur and Montagu.<sup>408</sup> Bathurst, writing to Arthur in September 1826, stated that he could not provide for his appointment to both the Legislative and Executive Councils, and rejected Montagu's appointment.<sup>409</sup>

There is no evidence to suggest that the Colonial Office was critical of Montagu's competence on this occasion. Writing in a private aside to Robert William Hay, Permanent Under Secretary at the Colonial Office, in April 1827, Arthur felt he had reason to apprehend that the Secretary of State had withdrawn that 'gratifying confidence which he has done me the honour to repose in me for so many years, and was viewing his administration with evident distrust.'<sup>410</sup> Hay, who was also a friend of Arthur, attempted to pacify the disillusioned governor: 'You may dismiss from your mind the idea that your proceedings are not looked upon with a favourable eye by this department', he explained.<sup>411</sup>

Contrary to Bathurst's instructions, Arthur retained Montagu in the service of the office of Clerk to the Councils, and he was listed among the government officials in a despatch dated January 1827, and continued in this capacity until 1833.<sup>412</sup> This aroused accusations of nepotism in Van Diemen's Land; indeed, the Colonial Office disallowed

<sup>406</sup> Arthur to Bathurst, 20 April 1826, *HRA*, III, V, p. 146. Arthur also informs Hay that he intends to appoint Montagu to the offices of both the Clerk of the Legislative and Executive Councils (pp. 193-4).

<sup>407</sup> *Ibid.*, p. 146. Charles Arthur was born in 1808, and sailed with Sir George to Van Diemen's Land in 1824. Arthur later served as a police magistrate at Norfolk Plains in 1837, retiring there in 1862. He died of a chill at Longford in 1884. See *ADB*, vol 1, p. 32.

<sup>408</sup> See later chapter's for a discussion about Hamilton.

<sup>409</sup> Bathurst to Arthur, 1 October 1826, *HRA*, III, V, p. 361.

<sup>410</sup> Shaw, *Sir George Arthur*, p. 112. Arthur's concerns are further highlighted on pp. 110 - 113.

<sup>411</sup> *Ibid.*, p. 112.

<sup>412</sup> Arthur to Bathurst, 30 January 1827, *HRA*, III, V, p. 501.

the appointment, however Arthur nevertheless reaffirmed the appointment and eventually carried the way.

Meanwhile, Montagu served on a number of boards of inquiry<sup>413</sup> and was active in tightening up colonial regulations.<sup>414</sup> His 'zeal and forthright comments' were not likely to lessen the emerging hostility towards Arthur's administration<sup>415</sup>, though writing some years later, newspaperman and critic, Andrew Bent, confessed that Montagu 'had qualities not often combined in a Tasmanian aristocrat'... and that his office 'worked with the celerity of clockwork, and courtesy was everywhere'.<sup>416</sup>

Like Arthur's wife Elizabeth, Jessy Montagu was not prominent in public life, although in 1832, she was an active member of the Ladies Immigration Committee, which was formed to 'inquire into the conduct and qualifications of female immigrants' arriving in the colony. The central Committee was comprised of seven sub-Committees, and held regular meetings at Government House, and at Mr Deane's room in Elizabeth Street. Mrs Montagu's sub-committee also included Mrs Bedford, Mrs Scott, Mrs Spode, Mrs Swan and Mrs Hutchison.<sup>417</sup> The Committee however was not simply a social gathering for the official's wives; their task was politically and socially sensitive, and Arthur explained to Goderich that the emigrants who were to be removed from England to Van Diemen's Land were 'under no restraint, legal or moral', and were 'much more difficult to manage than the convicts, and therefore much less likely to be reformed'.<sup>418</sup>

After six years in the colony, Montagu felt confident to offer his opinion on any matter that came before the government, though as always, Arthur's decision was binding and

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<sup>413</sup>Report on Claim of John Lakeland with Jocelyn Thomas (Arthur to Hay, 4 September 1826, *HRA* III, V, p. 347).

<sup>414</sup>*ADB*, vol 2, p. 248.

<sup>415</sup>*Ibid.*, p. 248.

<sup>416</sup>MCI Levy, *Governor George Arthur*, (Georgian House, Melbourne, 1953), p. 67.

<sup>417</sup>Arthur to Goderich, 8 September 1832, CO 280/34, p. 378. These were the wives of prominent colonial officials, including clergymen William Bedford, Thomas Hobbes Scott and Principal Superintendent of Convicts, Josiah Spode. Later, Lady Franklin's 'Ladies Committee', formed in 1841, spoke on a number of issues, and was criticised for being overbearing. See Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23.

<sup>418</sup>*Ibid.*, p. 378.

over-riding. In 1828, faced with the prospect of accompanying his regiment to India<sup>419</sup>, Montagu hastily applied to London for retirement from the army with the understanding that he could be more actively employed in the civil department of the colonial government.<sup>420</sup> Having received no confirmation of his resignation however, Arthur permitted Montagu to return to London in April 1829 aboard the *Mermaid* under the guise of some pressing military duty in order to settle the question.<sup>421</sup> In any case, Montagu learnt that his older brother Edward<sup>422</sup> had died, and expressed a desire to return to England for family reasons. On his arrival in London, Montagu presented the Secretary of State at the Colonial Office with the following recommendation from Arthur:

'On the occasion of Captain Montagu's departure, His Excellency cannot avoid expressing that his zeal, intelligence and discretion in conducting the business of the Council since its first appointment have merited the unqualified approbation of the Lieutenant Governor and insured him the entire confidence of the Council'.<sup>423</sup>

In 1830, Sir George Murray, who had succeeded Huskisson<sup>424</sup> as Secretary of State for the Colonies, finally confirmed Montagu in his appointment to the Clerkship of the Councils and accepted his resignation from the army. But nephew-in-law or not, Arthur asked Under Secretary Hay 'to add to Murray's instructions authority for him to ask the Clerk to do anything that might be needful for the public service; such a clear statement would prevent unpleasantness hereafter'. Short of competent officials in the colony, he

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<sup>419</sup> *ADB*, vol 2, p. 248.

<sup>420</sup> Newman, *Memoir*, p. 11.

<sup>421</sup> *Ibid.*, p. 14. His departure date is given as 8 April 1829. It was reported that Montagu led a detachment of invalids back to England!

<sup>422</sup> Edward Montagu, 1796 - 1830.

<sup>423</sup> *Ibid.*, p. 14. The letter is also reproduced in *The Montagu Manuscript Copy of the Complete Correspondence that Passed Between John Montagu and the Secretary of State for the Colonies with Regard to Mr Montagu's Disagreement with Sir John Franklin*, London, 1843, RS 114, p. 91. The Manuscript was presented to the Royal Society of Tasmania in November 1943 by a descendant of Charles Swanston's successor as Manager of the Derwent Bank, John Walker.

<sup>424</sup> Huskisson was Secretary of State at the Colonial Office between September 1827 and June 1828, when Sir George Murray succeeded him.

also opposed any extension of his leave; it would cause 'much inconvenience', wrote Arthur, who anticipated his prompt return.<sup>425</sup>

Having found himself in London at a turbulent time in penal affairs, Montagu was consulted by the Colonial Office on matters that had traditionally been close to the heart of Arthur's concerns. It was an example of how the 'tyranny of distance' applied very oddly to the autocratic colonial governors, who by virtue of their position, were the only members of the colonial establishment who could not go back to London to represent their own interests whilst in office. Conversely, critical civil servants or disaffected colleagues, or even ambitious officials like Montagu, were sometimes able to speak freely on all matters connected with the colonial government. Montagu felt comfortable in his new environment, and forged relationships that would prove useful when he returned to London ten years later. While Montagu was in London, Hay, who perhaps anticipated the adverse findings of the 1832 Select Committee on Secondary Punishment<sup>426</sup>, asked him to consider the very relevance of transportation itself<sup>427</sup>, to which Montagu replied:

'In obedience to the directions I had lately the honour to receive from you, I beg to submit for your consideration, the observations which have occurred to me on the following points -

1<sup>st</sup>. Whether the time appears to have arrived for Van Diemen's Land to be discontinued as a penal colony for the reception of offenders from this country.

2<sup>nd</sup>. What would be the probable inconvenience to the colony in regard to labour in the event of a determination to discontinue sending any more convicts there.

3<sup>rd</sup>. What, in my opinion, would be the effect of such a measure in encouraging the emigration of settlers from this country and;

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<sup>425</sup>Shaw, *Sir George Arthur*, p. 161.

<sup>426</sup>Lord Goderich forwarded a copy of the Committee's report to Arthur for comment on 27 September 1832. See Goderich to Arthur, 27 September 1832, CO 408/9, p. 6.

<sup>427</sup>This did not automatically mean however that transportation was in jeopardy. In 1819, Bathurst had asked the same question of Commissioner Bigge.

Lastly. My remarks on the penal settlements to which offenders in Van Diemen's Land are sent'.<sup>428</sup>

It pleased Hay that Montagu fully understood the importance of 'economy in all of this', something which would hold him in good stead with his superiors for years to come. 'The importance of economy too', declared Montagu, 'in the management of convict servants is now pretty well understood, but a proper and efficient system has not been yet established, owing to the difficulty of procuring sufficient workmen to enable the masters to obtain a fair proportion of daily labour, without having recourse to more expensive food than the farms produce'.<sup>429</sup>

Montagu added:

'Under these circumstances, I feel compelled to state, in reply to your first question, that, although there can be no doubt that a time will come, when an increase to the number of convicts will cease to be of material importance at Van Diemen's Land, I cannot think it will arrive, until the population is much more considerable, and the dependence on convict labour much less extensive, than it is at this time'.<sup>430</sup>

While Montagu advocated the continuance of transportation to Van Diemen's Land, fearing that the convicts already in the colony would solicit too many indulgences from the settlers anxious to retain their labour, he told Hay that transportation was not 'sufficiently dreaded in England by the lower order'.<sup>431</sup> He continued that while much had 'undoubtedly been done of late years to render transportation a severer punishment', there was 'information' that suggested the 'labouring class' in England committed crime for the purpose of being transported to Van Diemen's Land.<sup>432</sup> Montagu complained that

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<sup>428</sup> Montagu to Hay, Fulham, 10 April 1830, CO 280/27, p. 198.

<sup>429</sup> *Ibid.*

<sup>430</sup> *Ibid.*

<sup>431</sup> *Ibid.*

<sup>432</sup> *Ibid.* There is some evidence to support this, although it is usually given in the context of criticism of the transportation system. Evidence given to the Bigge inquiry in 1820 suggested that many 'passengers' aboard convict transports were 'happy' to leave England, while officials as Newgate believed transportation



convicts arriving in the colony were placed into occupations which were neither 'laborious nor disagreeable', and that there was a 'competition between the Crown and the settlers, by the indulgence of extra rations, and by a kinder treatment, to induce them to work'. 'These indulgences', he added, 'are communicated by the convicts to their friends and relations in this country, as to the nature of the employment and kind of treatment convicts are to receive after transportation'.<sup>433</sup>

Montagu suggested there was an alternative course of action however; 'if these doubts could be replaced by the certainty that, one description of hard labour on the roads, and one scale of rations of bread and meat await them on arrival at their destination, I think the effect would soon be apparent in this country'.<sup>434</sup>

Was Montagu, in opposition to Arthur, advocating that the convicts should be worked in labour gangs so as to bring about uniformity and certainty in their punishment? He continued:

'Should the government determine upon one general principle of treatment and labour for every description of convict... I am disposed to think the really vicious only, would then be conveyed from this country, and an important diminution of the charges for prosecutions and removal might be attained, without the injurious effects that would follow a total cessation of transportation'.<sup>435</sup>

In a second letter to Hay, Montagu went a step further and suggested that 'a large proportion of the public works in these colonies might be erected by contract'.<sup>436</sup> The economical advantages were foremost in his mind:

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was not 'conceived of as a punishment', but 'was received as a reward'. See Shaw, *Convicts and the Colonies*, p. 139.

<sup>433</sup> *Ibid.*

<sup>434</sup> *Ibid.* See also p. 157 of this paper. The currency of Montagu's proposal is evident in the report of the Select Committee on Secondary Punishment of 1832. Evidence was given by one Newgate official that transportation could be made a severer punishment and would be a deterrent if it were known that convicts would have to work in gangs for two years. See Shaw, *Convicts and the Colonies*, p. 139.

<sup>435</sup> *Ibid.*

<sup>436</sup> Montagu to Hay, Fulham, 8 April 1830, CO 280/27, p 173.

'[this] inclines me to concur with the Lords of the Treasury in the view their Lordships take of the subject: and I think I can show that, it would be more advantageous to the government, the colony and the convicts themselves, to contract for the public works as proposed, and to retain only in the service of government, those who are sick or require punishment'.<sup>437</sup>

'The convicts under punishment', proposed Montagu, could be 'employed in road making (and for many years to come there will be sufficient occupation of this kind for the refractory) upon the present admirable system of chain gangs, subject to the charge of those military officers who are stationed in the interior with their detachments, the employment of the Crown would soon be very much dreaded. And in proportion as that effect was produced, the desire of convicts to obtain and retain private service, would of course increase'. The proposal stayed in Montagu thoughts; ten years later, he referred specifically to disciplining the convicts in a 'uniform and certain' manner.<sup>438</sup>

For those men unable to 'procure masters', Montagu suggested:

'It should be that these men might also work on the roads without chains, by which arrangement, the description of labour, only more or less severe, would be established'.<sup>439</sup>

There was a negative aspect however to his gang theory. Montagu explained that the 'convicts are unwilling labourers; their overseers have no interest in the work performed, and it follows that, the result is usually defective in quality and quantity, whilst great pilfering of the public stores by convicts so employed, has been found unavoidable, and they have in consequence, frequently been enabled to gratify their desire for ardent spirits, the effects of which lead to crime and consequent punishment, that might in the absence of the temptation have been avoided'.

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<sup>437</sup> *Ibid.*

<sup>438</sup> *Ibid.*

<sup>439</sup> *Ibid.*

Similarly, in what would become the recurring cry of subsequent Van Diemen's Land officials, Major Thomas Mitchell later remarked in evidence before the Molesworth Committee in 1838 that the road parties in New South Wales were ineffective through lack of supervision, and were generally only useful in confined and concentrated work.<sup>440</sup> It did not seem to concern Montagu that he was advocating just that - assigning the convicts in road parties using limited supervision in the unsettled, unconfined districts.

The Colonial Office was sufficiently impressed with Montagu's proposals that in December 1830 it directed Arthur to adopt his subordinate's model for employing the convicts under contract on the public works, which in turn would 'simplify the accounts and reduce the expenditure of the colonies of New South Wales and Van Diemen's Land'. Hay added that having given consideration to Montagu's 'long period of residence in Van Diemen's Land', he had afforded 'much useful information on the subject'.<sup>441</sup>

Arthur was not convinced, and was infuriated that his nephew in law had taken it upon himself to recommend changes to his system. Writing to Lord Howick in February 1832, Arthur explained that 'in Captain Montagu's letter he has entirely overlooked at first, the most important feature of the case, and the last clause of Mr Hay's letter, in the observation "that the ordinary employment of the government is rather courted than dreaded by the convicts" affords striking proof how very much His Majesty's Government has been misled in particular'.<sup>442</sup>

Arthur was far from impressed with his protégé's comments, and he sent a long despatch to Hay outlining his own investigation into the operation of the system.<sup>443</sup> It was not the last time either that Montagu omitted all the facts in issue when it came to parading himself before the Colonial Office.

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<sup>440</sup> Minutes of Evidence taken before the Select Committee on Transportation, 1837, Q. 787, Major Thomas Mitchell, as reported in the British Parliamentary Minutes (Transportation), vol 3, Sessions 1837- 1861, p. 73. Born in 1792, Mitchell arrived in Sydney in 1827, and was appointed Assistant Surveyor General of the Survey Department. He was appointed Surveyor General next year.

<sup>441</sup> Hay to Arthur, Downing Street, 14 December 1830, CO 280/27.

<sup>442</sup> Arthur to Hay, 18 February 1832, CO 280/33, p. 283.

<sup>443</sup> *Ibid.*

Montagu's recommendations for working the convicts in gangs however were not overlooked. The future of the assignment system was under consideration by the home government, and there were reasons to suspect that it was neither certain nor laborious. According to Shaw, most commentators in England 'assumed that the fear of punishment would deter men and women from committing crime if the right type of punishment was inflicted'.<sup>444</sup> Montagu was quick to pick up on the essence of the debate, and struck the right chord with Downing Street. Reform was on the agenda, and while the punishment of the convicts in gangs was not at that time a preferred option, it was certainly worthy of consideration for the future.

Another side of Montagu had also emerged. In returning to England, Montagu had been uncertain as to his fate in the colonial service. Twelve months later, this ambitious and competent officer, having years before been described as lacking in 'judgement, decision and firmness'<sup>445</sup>, was required to return to Van Diemen's Land at a time when great changes were anticipated for the convict system in the Australian colonies. His proposals for employing the convicts in 'contract' gangs was well received, and Arthur, who was credited with having brought the convict system closest to perfection, was instructed to implement his subordinate's recommendations immediately. Montagu was not afraid to suggest that things had gone array in the system, that it required greater punishment, certainty, and economising. Downing Street would not forget his services either; promotion in the service was none too distant, and when he elected to return to London ten years later, he would be admitted once more into the seat of power, and have an extraordinary effect on the continuation of transportation to the colonies. But there was something else; he had been given a taste of leadership and superiority, which Arthur was quick to curtail. Unforeseen however at that time was a change in governorship in Van Diemen's Land, and with it, a weaker, less prominent head who was more easily manipulated, and totally inexperienced in administrative duties.

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<sup>444</sup> Shaw, *Convicts and the Colonies*, p. 138.

<sup>445</sup> See p. 69.

Montagu returned to Van Diemen's Land in January 1831<sup>446</sup>, seven months prior to the arrival of Captain Matthew Forster and his wife, who was also a daughter of Arthur's sister, Mary. The Colonial Auditor, GTWB Boyes, said of Montagu's return:

'Captn. Montagu came to Hobart Town the last time in the *John* convict ship. His family consisted of himself, Mrs Montagu, three children and two servants/ a man and a woman. He had excellent accommodation and was most liberally treated for which he paid £210'.<sup>447</sup>

Prior to Montagu's departure for England, Boyes had been offered a secondary appointment of Secretary to the Schools in the colony, which attracted a salary of £100 annually.<sup>448</sup> Boyes recorded in his diary that when Montagu was in England, the Secretary of State had decided to increase the salary to £200 a year, prompting the newly retired Captain to offer his services in that direction.<sup>449</sup> Boyes suspected that Montagu had received 'a promise of the situation in addition to his other emoluments', and upon returning to Van Diemen's Land, 'began scheming to secure the hundred a year for himself'.<sup>450</sup> This could only be done', continued Boyes, 'by getting me out of the country - and it happened very opportunely in furtherance of his plan that he was given to understand on his arrival here that I was most desirous to go to England'.<sup>451</sup> Boyes concluded his entry with the observation that

'Mrs Montagu is Coll. [sic] Arthur's niece and Montagu might be considered almost as an organ of the Lt. Governors'.<sup>452</sup>

Indeed, Boyes was hoping this to be so, as Arthur was against the idea of letting Boyes, his competent Colonial Auditor, return to England. Boyes concluded:

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<sup>446</sup> 28 January 1831.

<sup>447</sup> ed. P Chapman, *The Diaries and Letters of GTWB Boyes, Vol 1, 1820 - 1832*, (Oxford University Press, Melbourne, 1985), p. 603.

<sup>448</sup> Chapman, *Boyes Diary*, p. 403.

<sup>449</sup> *Ibid.*, p. 403.

<sup>450</sup> *Ibid.*, p. 404.

<sup>451</sup> *Ibid.*, p. 404.

<sup>452</sup> *Ibid.*, p. 404.

'so that altogether I think my prospects in leaving this place are rather brighter than when I wrote the black ink lines'.<sup>453</sup>

In any case, Montagu resumed his office in the Councils and Acting Colonial Secretary when the substantive officer, John Burnett, was sick.<sup>454</sup> Lord Goderich at the Colonial Office stipulated that the post was only temporary, and that 'a person would be sent out from England to fill the office, which will then become vacant of the Clerk of Council'.<sup>455</sup> Indeed, Henry Melville described Montagu as the 'official warming pan, having been appointed to so many situations before he was confirmed in any one of them by the Home Government'.<sup>456</sup> When Burnett's health improved, he returned to the post of Colonial Secretary, but Arthur reminded Howick at the Colonial Office that 'Mr Montagu is highly competent, both by his acquirements and experience, to fill the office of Colonial Secretary with benefit to the public service'. Arthur added;

'I should have great pleasure in recommending his permanent appointment to Lord Goderich in the event of [a] vacancy'.<sup>457</sup>

Although Montagu performed admirably in his temporary posts<sup>458</sup>, Arthur felt compelled to censure his nephew-in-law when the occasion demanded it. In response to a complaint

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<sup>453</sup> *Ibid.*, p. 405. Boyes was right, though it is debateable whether it was Montagu's influence over Arthur that secured the release. Boyes returned to England on 14 April 1832, but sailed again for the colony on Christmas Day 1833 (Chapman, *Boyes Diary*, p. 28). The relevance of his reference to black and red ink is explained by Peter Chapman: 'In many of his letters Boyes adopted the practice of cross-writing over the letter after covering the page of the letter with normal handwriting. The cross writing was done in either black or red ink, and he sometimes varied the practice by writing between (instead of across) the original (black) lines in red ink' (p. XXV).

<sup>454</sup> Goderich to Arthur, 25 August 1832, CO 408/9, p. 350. See also Shaw, *Sir George Arthur*, p. 161.

<sup>455</sup> *Ibid.*

<sup>456</sup> Melville, *History*, p. 140.

<sup>457</sup> Arthur to Howick, 10 April 1832, CO 280/34, p. 214. Howick still minuted however that 'approve of Actg Appt Mr Montagu that he be confirmed shd Mr Burnett's indisposition continue Ld G will send out in that case an individual to be appointed Clerk of the Council'.

<sup>458</sup> Newman, *Memoir*, p. 14. Newman states that he held the post for one year and had received flattering testimonials of the efficient manner in which he had conducted his affairs.

from Montagu<sup>459</sup> that he had not at once been given the permanent post of Colonial Secretary, Arthur rebuked:

'You are too vehement... It is most unreasonable of you to expect that I should do more on your account than I could make up my mind to do on my own... I could scarcely have expected, after having voluntarily recommended you for the appointment of Colonial Secretary, and obtained the promise of the late Secretary of State to confer it upon you if it were vacant; and after having so recently done all that, with consistency and propriety, all that lay in my power to do, to obtain for you the appointment of Treasurer, to have been addressed in the terms of your letter, because I decline to go all the length you wish... Depend upon it Montagu, the office will not prove a bed of roses to you, if it is obtained by any means which you cannot, hereafter, entirely approve.'<sup>460</sup>

When at last Montagu did succeed to the office of Colonial Secretary in 1835 when John Burnett retired, Arthur issued a clear set of instructions to his newly promoted charge.<sup>461</sup> Writing to Montagu in a personal aside the previous year<sup>462</sup>, Arthur had warned his nephew 'in plain terms, so as to avoid any future misconception and reference to a very bad precedent', that he could not expect any allowance for unsatisfactory work.<sup>463</sup>

Montagu wrote to Arthur the following day:

'I hasten to assure you how gratifying your selection of me for this important post has been to my feelings, and beg you will accept my best thanks for the obligation... I am well aware that your anxiety to promote the best interests of the public service and to facilitate the transaction of the complicated details of this government would prompt you to select one in whom you could place the most implicit confidence. I therefore cannot

<sup>459</sup> Montagu to Arthur, 19 November 1833, Sir George Arthur Papers, 1821 - 55, vol 16, A2176

<sup>460</sup> Arthur to Montagu, 21 November 1833, Sir George Arthur Papers, 1821 - 55, vol 5, A2165.

<sup>461</sup> Shaw, *Sir George Arthur*, p. 162. Montagu succeeded John Burnett as Colonial Secretary, who was dismissed by Arthur for land jobbing. Montagu's instructions are also given: 'make himself master of every case; he was never to commit the government; he was to watch the convict administration carefully; investigate every requisition; and to sanction no expenditure without the Governor's authority'.

<sup>462</sup> Arthur to Montagu, 8 August 1834, Sir George Arthur Papers, 1821 - 55, vol 5, A2165.

<sup>463</sup> Levy, *Sir George Arthur*, p. 64.

but be proud of the honourable distinction that has been publicly manifested by the hand of the local government in entrusting the executive branch of the administration to my hands... I assure Your Excellency that no effort on my part will be wanting to justify the selection of me and to secure the attainment of the important objects you have in view'.<sup>464</sup>

During the term of Arthur's government, Montagu was silent on the assignment system (at least in writing), though he strictly adhered to its principles.<sup>465</sup> He maintained a vigilant watch over the convict administration, warning George Meredith, a settler near Swanport, that his criticism of a local magistrate had persuaded the governor that he could not be 'a proper person to have the charge and control of assigned servants' and 'that the removal of every convict in his service was not an improbable event'.<sup>466</sup> Meredith was a vocal opponent of the government, and came into open conflict with Arthur during the press debates.<sup>467</sup> It is hardly surprising that Montagu, representing the governor, took the earliest opportunity to inflict some economic hardship on Meredith by withdrawing his convict labour, a fate he shared with a number of Arthur's opponents. Meredith later wrote that the

'emigrant farmer depends solely on his convict labour for convict servants were the only available means of carrying on their important avocation in life'.<sup>468</sup>

Indeed, such was the authority of the governor's that Arthur's successor, Sir John Franklin, later observed that Arthur had the 'power to grant Crown lands, and to assign unlimited supplies of convict labour... sufficient to enable him to make or to mar the fortunes of any individual under his government'.<sup>469</sup>

<sup>464</sup> Montagu to Arthur, 9 August 1834, Sir George Arthur Papers, 1821 - 55, vol 16, A2176.

<sup>465</sup> It is reported however that Montagu had at one time 19 convict servants in his employ. See Shaw, *Convicts and the Colonies*, p. 218.

<sup>466</sup> Forsyth, *Convict System*, p. 112.

<sup>467</sup> *ADB*, vol 2, p. 225. Meredith arrived in the colony in 1821, and obtained a large grant of land on the east coast of the colony. He became wealthy, though according to his biographer, never recovered from his disagreements with the Arthur government.

<sup>468</sup> Meredith to Glenelg in Arthur to Glenelg, 30 December 1837, as quoted in Shaw, *Convicts and the Colonies*, p. 220.

<sup>469</sup> Franklin, *Narrative*, p. 6. This was a major complaint in the Molesworth reports. See Report from the Select Committee on Transportation, 3 August 1838, as reported in the British Parliamentary Minutes (Transportation), vol 3, Sessions 1837 - 1861, p. xiii.



The consideration of applications for assigned servants was after 1832, reserved for a special board of assignment, consisting of the Principal Superintendent of Convicts, the Chief Police Magistrate and the senior officer commanding the military in Van Diemen's Land.<sup>470</sup> According to Forsyth, 'this body recorded applications for servants in their order as they came into the office', 'prepared weekly a general abstract of applications and laid it before the Governor, together with information enabling him to make an immediate decision, no assignment being authorised without his sanction'.<sup>471</sup>

Captain Matthew Forster's appointment to this Board in 1832, and as Chief Police Magistrate next year, marked a further step for another relative by marriage in Arthur's circle of power.<sup>472</sup> Forster was born in 1796, and was the son of a high ranking army officer. He joined the army as an ensign, and was promoted to lieutenant in 1812, three years before Montagu. After 15 years military service in Ireland, he was promoted to the rank of captain, and for a time served as Deputy Judge Advocate in Limerick. Forster had married St Helena Worsley, another of Arthur's nieces, before sailing to Van Diemen's Land aboard the *Mary Ann* in 1831, bearing the impressive testimonials of Lord Goderich, Lord Holland (Whig politician), and Sir Herbert Taylor of the Horse Guards.<sup>473</sup> Unlike Montagu, Forster sold his commission before leaving London, and was anxious to join the civil service. In addition to his magisterial duties, Forster was appointed a member of the Legislative Council in December 1833 and a member of the Executive Council in April 1836.<sup>474</sup> Arthur described Forster as one of the 'most competent officers in the service of the government, and capable of entering with impartiality' into any investigation.<sup>475</sup> While there is no doubt Arthur valued his services, Forster was more

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<sup>470</sup> Arthur advised Lord Goderich that he had formed the board in September 1832. See Arthur to Goderich, 10 September 1832, CO 280/35, p. 437.

<sup>471</sup> Forsyth, *Convict System*, pp. 51-2. Arthur was criticised of favouritism in appointing Forster to the board. See Shaw, *Convicts and the Colonies*, p. 217 and 233.

<sup>472</sup> *ADB*, vol 2, p. 404. See also Shaw, *Sir George Arthur*, p. 160.

<sup>473</sup> Shaw, *Sir George Arthur*, p. 160. William Bryan, an aggrieved colonist, claimed Forster was given the position of Chief Police Magistrate after Arthur created another position for the then Chief Police Magistrate, PA Mulgrave. In reply, Arthur referred to the strong recommendations that Forster had brought with him from England. Obviously, it sometimes suited Arthur to draw on his official's patronage. See also Robson, *History*, p. 300.

<sup>474</sup> Forster replaced Chief Justice Pedder in the Executive Council when Goderich objected to the Chief Justice being a member of the Executive Council (see *ADB*, vol 1, p. 404).

<sup>475</sup> Arthur to Hay, 12 December 1832, CO 280/36, p. 183.

'liberal' in his politics than Montagu, and supported the opening of the Legislative Council debates to the public, and won approval in the press for his opposition to the Newspaper Act.<sup>476</sup> However, former Arthur oppositionist, editor and agriculturalist Gilbert Roberston<sup>477</sup> wrote inauspiciously of Forster that

'Captain Forster is acknowledged by all parties, to be vastly inferior to both his colleagues, in the sort of talent requisite to constitute a politician, and he is therefore, notwithstanding his hasty decision and despotic principles, thought to be the least dangerous of the three; and he has the character of being open and undisguised in the exercise of his despotism. But he is nevertheless one of the Arthur "faction", and his repulsive, overbearing manner betrays a decided arrogance and contempt for the people, who pay these oppressors'.<sup>478</sup>

Subdued by his indiscretions in London in 1830, Montagu refrained from contradicting Arthur's policy, and was held in greater confidence by the governor. Described as being less the object of attack than the more efficient, more powerful and therefore more unpopular Montagu, Forster nevertheless made himself familiar with all the details of the magistracy, and kept a 'watchful eye' on Arthur's system of convict discipline.<sup>479</sup> A veteran of the Peninsula campaigns in Europe, Forster assumed the role of the government's 'heavy hand', and Arthur regularly called on him to remove wayward officials from office, or investigate social unrest. One example of this was Arthur's decision to remove James Gordon from the office of police magistrate of the Richmond District in 1832 due to his incompetence.<sup>480</sup> Before Gordon was removed from office, Arthur sent Forster to Richmond in March 1832 to examine Gordon's accounts and 'enquire into the state of the police of the district'.<sup>481</sup> Even though Gordon was allegedly 'laying dangerously ill', Forster met with Gordon and questioned him about the poor state

<sup>476</sup> Forster also recommended complete freedom of religious teaching in schools (see *ADB*, vol 1, p. 404).

<sup>477</sup> See Chapter 4 for a discussion about Robertson and his opposition to the colonial government.

<sup>478</sup> *True Colonist*, 20 October 1837, as quoted in Fitzpatrick, *Franklin*, p. 110.

<sup>479</sup> Forster also deliberated on a number of inquiries and committees in the colony, including the treatment of the aboriginals and the conduct of Rolla O' Ferrall, a government official. See Robson, *History*, p. 295, and *ADB*, vol 1, p. 404. See also Fitzpatrick, *Franklin*, p. 100.

<sup>480</sup> Gordon was accused of not paying the constables in his district, and that he used a 'vicious system' of paying them in small sums of food and clothing. See Forster to Arthur, 11 March 1832, CO 280/35, p 418.

<sup>481</sup> Gordon to Goderich, contained in Arthur to Goderich, 8 September 1832, CO 280/34, p. 383.

of affairs in the police office of Richmond.<sup>482</sup> Forster was damning of the Police Magistrate, and as spokesmen for the investigation, commented on Gordon's inattention to duty:

'[We] are sure Your Excellency will not think that we are stepping out of the line of our duty as servants of the Crown, in remarking that such a state of things is highly injurious and discreditable to the service, destructive to the reputation of the Richmond Police, and calculated to lower it in the eyes of the public'.<sup>483</sup>

Gordon himself later wrote:

'Captain Forster, in a conversation with the Chief Constable of the District, whom he knew to be in my confidence, advised him to persuade me to resign my office immediately, and it is a remarkable fact that Captain Forster should have stated to other persons that he was determined to remove the Chief Constable from office within five weeks, though at this time there was no complaint against that officer that I am aware of, but on the contrary, that he stood high in the confidence of the Governor, and it will appear to Your Lordship from the sequel that Captain Forster obtained the fulfilment of his threat to the letter'.<sup>484</sup>

Gordon complained that he had been treated poorly, but to no avail; in April, Montagu informed Gordon that the government no longer required his services.<sup>485</sup>

Similarly, when in February 1832, the *Princess Royale*, carrying a cargo of boisterous female emigrants, was wrecked off Frederick Henry Bay on the last leg of her passage to Hobart town, Forster was to the fore. Together with the lieutenant governor, Forster travelled almost immediately by sea to the wreck, and personally oversaw the rescue

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<sup>482</sup> *Ibid.*, p. 383.

<sup>483</sup> Forster to Arthur, 11 March 1832, CO 280/35, pp. 107. Colonel Logan accompanied Forster to Richmond to conduct the inquiry.

<sup>484</sup> Arthur to Goderich, 8 September 1832, CO 280/34, p. 383.

<sup>485</sup> *Ibid.*, p. 384. See also Minutes of the Executive Council, 10 March 1832, CO 280/35, p. 106. Montagu wrote: 'Under any review of the subject the Council thought Mr Gordon ought to be immediately suspended from his office'.

operation to ensure that 'all of the women were removed into smaller vessels for the purpose of conveying them to Hobart Town'. Arthur added that only the most trusty constables under Forster's direction were used, and all were 'married men'!<sup>486</sup>

And later that year, a board was 'instituted for the purpose of inquiring into the system of conducting the public duties of the Colonial Treasurer', Jocelyn Thomas, comprising the Civil Auditor, the Commissioner of Accounts, and rather conspicuous among the money men, Matthew Forster, the Chief Police Magistrate. Always dependable, Forster oversaw the short investigation, and reported on the 'apparently incorrect register... inaccuracy of dates... and more important irregularities'. Following the investigation, Thomas was also removed from office, and succeeded by none other than John Montagu until a replacement was sent out from England.<sup>487</sup>

Together with the remaining members of Arthur's public administration, Montagu and Forster 'formed a compact and strong body of connections and adherents bound to their chief by ties of obligation and gratitude, and by the esprit de corps which exists wherever opposition is active.'<sup>488</sup> Indeed, Boyes later observed that

'like Colonel Arthur himself and all his relative and connections, the Coll.[sic] Secretary and Ch. Police Magistrate in fitting up their offices as well in all other matters have taken particularly good care of themselves'.<sup>489</sup>

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<sup>486</sup> *Ibid.*, p. 376.

<sup>487</sup> Arthur to Goderich, 10 December 1832, CO 280/36, p. 542. Montagu performed the duties of treasurer between the 21 December 1832 and 22 August 1833.

<sup>488</sup> Franklin, *Narrative*, p. 7. See also Fitzpatrick, *Franklin*, p. 15. Fitzpatrick observes that Arthur employed part of his capital by lending it to officials of his government. His successive Colonial Secretaries, John Burnett and John Montagu, were heavily in his debt, as were Forster and the Attorney General, Alfred Stephen, among others (see Shaw, *Sir George Arthur*, p. 152). In another letter to Glenelg, William Bryan referred to Arthur's administration as a 'faction without integrity bound together by mutual interests' of profit making directed by the 'principal partners in the firm of George Arthur and Co.' (Bryan to Glenelg, 24 November 1835, quoted in V Korobacz, *The Legislative Council of Van Diemen's Land 1825 - 1855*, unpublished MA Thesis, History and Classics, University of Tasmania, 1971, p. 119.

<sup>489</sup> Typescript of the GTWB Boyes Diary, Held by Mr Peter Chapman, University of Tasmania, 14 January 1842. Hereafter referred to as the Boyes Manuscript.

Arthur's obvious respect for Montagu's ability as a colonial administrator was also recorded in a confidential despatch to his successor in 1837: 'From the Colonial Secretary', he reflected, 'you will derive all that assistance which can be expected from an experience in colonial matters of thirteen years duration, from thorough habits of business and from assiduous application to office duties, combined with an integrity of character that can be entirely relied upon'.<sup>490</sup> The confidence in which Arthur held Montagu was also evident in a despatch addressed to the new Secretary of State at the Colonial Office, Lord John Russell, and later included in an enclosure to Franklin in November 1839:

'Nothing... can exceed the estimation which I have formed of that officer's character as Colonial Secretary of the government... a perfect man of business, thoroughly conversant with all the details of office'.<sup>491</sup>

Arthur also wrote:

'His Excellency cannot permit this occurrence to pass without publicly recording the unwearied zeal for the public good which has distinguished the performance of his [Montagu's] duties in this government and attained for him the confidence and esteem of all classes of the community. I should record that the zeal, ability and singleness of purpose with which he devotes himself to promoting the interests of my government and to carry into effect so soon as they are made known to him, my measures for the institutions of the colony, and for the improvement of convict discipline'.<sup>492</sup>

His advice to Montagu was equally pertinent; Arthur was still 'smarting' about the 'private jealousies... systematic opposition... discord and tumult'<sup>493</sup> which acted against his own government in Honduras, and reminded Montagu that the convict system 'hinges

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<sup>490</sup> Arthur to Franklin, Montagu Manuscript, p. 91. Newman also transcribes this passage into his biography of Montagu, p. 15.

<sup>491</sup> 11 November 1839 contained in an enclosure from Russell to Franklin. See Fitzpatrick, *Franklin*, p. 109.

<sup>492</sup> Arthur to Franklin, 1 October 1838, as quoted in the Montagu Manuscript, p. 91

<sup>493</sup> Shaw, *Sir George Arthur*, p. 26.

almost entirely upon the zeal and efficiency of [the] government; if the minutest regulation be not observed, the most extensive mischief must follow to a measure of great national importance'.<sup>494</sup>

In turn, Montagu congratulated Arthur on the 'undeviating harmony and good feeling' that prevailed in the colony at the time of his recall.<sup>495</sup> 'Those who have witnessed', he continued, 'the success of Your Excellency's measures for public and individual protection - for the prevention and punishment of crime - for the control and discipline of the convict population - and for the removal and settlement of the aboriginal natives - can easily comprehend the steps which have led to such happy and prosperous results, and are sensible that the value of property has increased contemporaneously with the development and accomplishment of Your Excellency's plans for the general welfare of the inhabitants of this colony and the security of their persons and property'.<sup>496</sup>

It was with great anticipation then that Montagu and the remaining members of Arthur's party received their new governor and his family aboard the *Fairlie* on 6 January 1837.<sup>497</sup> According to West, 'the polar hero's fame had proceeded him', and a lavish ball attended by over 600 colonists was held in his honour.<sup>498</sup> The explorer Franklin, who was born in Spilsby, Lincolnshire, in April 1786<sup>499</sup>, was regarded with 'near-superstitious awe', and was nothing short of a 'hero' in exploratory circles after a failed expedition along the North American coast in 1819.<sup>500</sup> While the expedition itself achieved very little in the scheme of Arctic exploration, his feats of survival 'had become an overnight bestseller'.<sup>501</sup>

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<sup>494</sup> Arthur to Montagu, 8 August 1834, Sir George Arthur Papers, 1821 - 55, vol 5, A2165.

<sup>495</sup> West, *History*, p. 143.

<sup>496</sup> Forsyth, *Convict System*, p. 116.

<sup>497</sup> Franklin embarked with his family aboard the *Fairlie* at Portsmouth on Sunday 27 August as reported in Lady Franklin's Journal (25 August 1836, MS 248/84) and in the *Hobart Town Courier*, 23 December 1836. Prior to their departure, they stayed several nights at the Fountain Inn, Portsmouth, before boarding the vessel.

<sup>498</sup> Robson, *History*, p. 318. According to West, the progress of the governor through the colony was attended with feasting, balls, and public rejoicings. See West, *History*, pp. 146-7.

<sup>499</sup> 16 April 1786.

<sup>500</sup> F Fleming, *Barrow's Boys*, (Granta Books, London, 2000), p. 123. Before his exploratory feats, Franklin joined the navy at age 14, serving at the battle of Copenhagen in April 1801, and between 1802 and 1803, he served alongside his uncle by marriage, Matthew Flinders, in a voyage of discovery around Australia. See *ADB*, vol 1, p. 412.

<sup>501</sup> *Ibid.*, p. 123.

According to historian Fergus Fleming, he was 'formal, painfully shy and abnormally sensitive'.<sup>502</sup> He even carried with him a 'twelve point check list entitled *Have I this day walked with God?*<sup>503</sup>, and was recorded as having not swatted a mosquito off his arm because he believed there was enough room in the world for both of them.<sup>504</sup> But Franklin was likeable, and Fleming suggests that it was his charm rather than his ability that won him leadership of 1819 expedition. In any case, the expedition was disorganised right from the start, and though his instructions were vague at the best<sup>505</sup>, Franklin was unprepared and lacked the authority and assertiveness required of a person in such a position.<sup>506</sup> He followed his instructions to the letter, even when they were clearly inappropriate or foolhardy under the circumstances. Near death<sup>507</sup> after an horrendous winter, and his party either dead, absconded or plotting mutiny<sup>508</sup>, Franklin was forced to literally eat his own boots, fur skins and other garments in order to survive. One member of his party had even resorted to cannibalism, though Franklin was not aware of the act. When finally rescued by Indians from certain death, eleven men of his party of twenty had died, and in a marked understatement, official reports noted that they had not 'fully achieved the object of their mission'.<sup>509</sup> Fleming concluded that every stage of the journey had been 'mismanaged', and that very little scientific endeavour was salvaged from the expedition.<sup>510</sup> Whatever his lack of success however, Franklin was well received in London, and particularly by the Colonial Office, whose interests in exploration benefited from the public exposure given to Franklin.<sup>511</sup> A second expedition along the Canadian coast followed for Franklin in 1825, but this time, it was a 'glorious success'.<sup>512</sup> Franklin received a knighthood, and there was none of the suffering that accompanied the first expedition. This time, according to Fleming, Franklin's voyage 'was so well organised as to allow little scope for failure'.<sup>513</sup> While he was away, his first wife died,

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<sup>502</sup> *Ibid.*, p. 125.

<sup>503</sup> *Ibid.*, p. 125.

<sup>504</sup> *Ibid.*, p. 129.

<sup>505</sup> *Ibid.*, p. 125.

<sup>506</sup> *Ibid.*, p. 127.

<sup>507</sup> *Ibid.*, p. 139.

<sup>508</sup> *Ibid.*, p. 141.

<sup>509</sup> *Ibid.*, p. 153.

<sup>510</sup> *Ibid.*, p. 153.

<sup>511</sup> *Ibid.*, p. 159.

<sup>512</sup> *Ibid.*, p. 175.

<sup>513</sup> *Ibid.*, p. 173.

and in 1828, Franklin married Jane Griffin, his second wife<sup>514</sup>, and two years later, he returned to naval duty off the coast of Greece during the War of Independence.<sup>515</sup> Franklin appears to have gained some respect there for his administrative ability in managing the Greek civil population, where it was reported that his 'calm and steady conduct may be attributed the preservation of the town and inhabitants of Patras; the protection of commerce; and the advancement of the benevolent intentions of the allied sovereigns in favour of the Greek nation'.<sup>516</sup> Consequently, the Greek Government in recognition of his bravery and service awarded Franklin the prestigious Order of the Redeemer.<sup>517</sup> The award was in keeping with the romantic and exciting explorer status he attracted, but Franklin still possessed a 'kind, vacillating personality'<sup>518</sup>, and from his past experiences it was unlikely he was suited to colonial duties, where 'swatting' dissident and wayward officials was a matter of course - and survival.

Franklin returned to England in 1834 after three years of distinguished service in the Mediterranean, including success as an administrator in Greece. He was anxious to secure immediate employment in the foreign service, although in a letter to his wife, now Lady Franklin<sup>519</sup>, Sir John confided that he held out little promise.<sup>520</sup> In any case, Franklin remained in England, reflecting that 'it would hardly do for him to leave after having so recently asked for employment'.<sup>521</sup>

In early 1836, Lord Glenelg offered Franklin the post of lieutenant governor of Antigua, which he declined on the basis that it offered little in the way of 'responsibility and command'.<sup>522</sup> Co-incidentally, Lady Franklin was also against it, bringing to her husband's attention that he would be a subordinate to the Governor in Chief of the Lee-

<sup>514</sup> Franklin's first wife, Eleanor Porden, died unexpectedly during his second voyage to the Arctic. They had one child, also named Eleanor. Sir John and Lady Jane Franklin had no children.

<sup>515</sup> His duties were described as peace keeping aboard the HMS frigate *Rainbow*.

<sup>516</sup> Fitzpatrick, *Franklin*, pp. 27 - 28. His duties had been too oversee Greece's transition from Ottoman colony to independent empire (see Fleming, *Barrows Boys*, p. 326). For his troubles, Franklin was received in London by William IV.

<sup>517</sup> *Ibid.*, p. 28.

<sup>518</sup> Fleming, *Barrow's Boys*, p. 327.

<sup>519</sup> Jane, Lady Franklin. Hereafter referred to as Lady Franklin.

<sup>520</sup> Franklin to Lady Franklin, 29 January 1834, as quoted in Fitzpatrick, *Franklin*, p. 28.

<sup>521</sup> *Ibid.*, 9 May 1835, as quoted in Fitzpatrick, *Franklin*, p. 29.

<sup>522</sup> *Ibid.*, 25 March 1836, as quoted in Fitzpatrick, *Franklin*, p. 30.



ward Islands.<sup>523</sup> His refusal pleased Lady Franklin and some of his friends, one of whom remarked that his wife was a 'woman of most excellent understanding and judgement'.<sup>524</sup> Her alleged undue exercise of such judgement perhaps complicated Franklin's administration in years to come and was to be of increasing concern to his senior officials. A week later, Glenelg instead offered Franklin the 'important and interesting'<sup>525</sup> governorship of Van Diemen's Land, a posting he and Lady Franklin were glad to accept.

Like Arthur, Franklin brought his family and friends to the colony, including Captain Alexander Maconochie, whom he appointed as his Private Secretary.<sup>526</sup> Mindful of his own inexperience in the affairs of colonial government and the strong party feeling which existed in the colony, Franklin consulted the officials of his predecessor's administration and assured them that he was determined not to disturb the ex-governor's policy without 'necessity'.<sup>527</sup> Franklin was particularly conscious of the appointment of Montagu and Forster to the office of Colonial Secretary and Chief Police Magistrate respectively:

'These gentlemen', he wrote, 'had married two sisters, nieces of Sir George Arthur, and owed entirely to him their occupation of offices which are almost invariably in the present day filled from home. They were by virtue of their offices members of the Legislative and Executive Council, which consists of only six individuals, their influence was very generally felt.'<sup>528</sup>

Franklin was also aware that their backgrounds were in the military, and as a naval officer, he anticipated some degree of antagonism and resistance to his measures.<sup>529</sup>

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<sup>523</sup> Fleming, *Barrows Boys*, p. 326.

<sup>524</sup> *Ibid.*, p. 326.

<sup>525</sup> Glenelg to Franklin, 1 April 1836, as quoted in Fitzpatrick, *Franklin*, p. 30.

<sup>526</sup> Fitzpatrick, *Franklin*, p. 44. Maconochie was born on 11 February 1787 in Edinburgh. He entered the Royal Navy in 1803, and served in the West Indies and the Baltic, until he was captured by the Dutch and held as a prisoner of war in 1811. On release, he returned to England, and became the first Secretary of the Royal Geographical Society in 1830. He also became the first Professor of Geography at the University College, London. Then, in 1836, Franklin asked Maconochie to accompany him to Van Diemen's Land as his Private Secretary.

<sup>527</sup> Franklin, *Narrative*, p. 6.

<sup>528</sup> *Ibid.*, p. 7.

<sup>529</sup> Fitzpatrick, *Franklin*, p. 100.

Montagu and Forster were close friends as well as colleagues, and Franklin reported that they 'simultaneously requested leave of absence' in 'order to go into the interior' to stay at Forster's brother's home near Hamilton in the Marlborough District.<sup>530</sup> Franklin added that they travelled together, 'bespoke their social fare and accommodations at the same inn', and once attended together as 'companions at a public sale of stock numerously attended, at no great distance from Hobart town'.<sup>531</sup>

After the festivities were over in Hobart, Franklin visited the north of the colony, where all of Launceston it was said, turned out to greet him.<sup>532</sup> Some of the colonists who had been aggrieved by Arthur, alluded to the existence of a strong party that was known to the whole colony and was 'bound by ties of relationship and of gratitude to the late Governor'.<sup>533</sup> The strong party feeling was 'dreaded by the opposition, and was still very powerful; nor was it difficult to perceive that past animosities had lost little of their vigour'<sup>534</sup> - according to West, Franklin was scarcely seated when the press professed to discover that he was an 'instrument in the hands of the Arthur "faction"'.<sup>535</sup>

Those sentiments were exacerbated several months later by an incident in which Henry Arthur, another nephew of the ex-governor, was allegedly horse whipped by Thomas George Gregson in a drunken stand-off barely two days after his uncle had sailed out of the Derwent.<sup>536</sup> Gregson was a staunch advocate for free settler's liberties, and had publicly opposed Arthur's penal policy at every opportunity.<sup>537</sup> He was a leading

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<sup>530</sup> On one occasion, Forster was 'laying out [convict] probation parties' in the area. See Montagu Manuscript, p. 45.

<sup>531</sup> Franklin, *Narrative*, p. 31.

<sup>532</sup> Robson, *History*, p. 318.

<sup>533</sup> Franklin, *Narrative*, p. 8.

<sup>534</sup> West, *History*, p. 147.

<sup>535</sup> *Ibid.*, p. 147. Franklin and his party visited Port Arthur in March 1837. In her diary, Lady Franklin also spoke of their visit to the Isle of the Dead (Isle Des Morts). During the visit, she wrote: 'Sir J with some of gents was long employed amongst convicts listening to their petitions and issuing orders to have some removed - this is done twice a year. Mr Montagu sd. it worked well as incitement to good behaviour'. Lady Franklin's Journal, 24 March 1837, MS 248/156. See also chapter 5 for Montagu's comments about the visit.

<sup>536</sup> Robson, *History*, p. 320. Henry was born in 1801, and sailed with Sir George to Van Diemen's Land in 1824. He was appointed Collector of Customs, and was later a member of the Port Phillip Association. Henry was a good friend of his cousin Charles, and died at Longford in 1848. See *ADB*, vol 1, p 38.

<sup>537</sup> Gregson was born in England in 1798, and emigrated to Van Diemen's Land in 1821. He was granted land near Jericho, and later at East Risdon. After a long list of clashes with Governor Arthur, and later,

advocate for trial by jury, and in 1832 he became editor of oppositionist paper the *True Colonist*. The whipping culminated in a sentence of imprisonment for Gregson, handed down by Judge Algernon Montagu<sup>538</sup>, but a petition, said to have been signed by 1500 colonists, was circulated in Hobart by a number of Gregson's supporters and subsequently presented to the governor.<sup>539</sup> The press again intervened, warning Franklin that his Executive Council was tainted by the friends and relations of Governor Arthur<sup>540</sup>, and in keeping with his personality, Franklin remitted the sentence in an act of 'clemency to mark the beginning of his administration.'<sup>541</sup> Franklin and his wife became friends with Gregson however, who, like the governor, had an interest in science and education, and in 1842, Franklin appointed him to the Legislative Council.<sup>542</sup> Lady Franklin later added that Gregson 'is full of good and generous impulses'.<sup>543</sup>

In a private letter to Arthur, Montagu complained that Franklin was 'frightened' of Gregson<sup>544</sup>, though hastened to reassure the ex-governor that all was well by playing down party feeling at a time when Arthur was concerned about his financial interests in the colony:

'You will perceive by the newspapers that Mr Gregson is in jail upon Henry Arthur's prosecution for an assault and is sentenced to three months imprisonment and to pay a fine of £200. The party, of which he is the head, and the press has been employed to intimidate and make accusations prejudicial to every one who ventures to support Henry - and he is openly accused of having committed perjury - party feeling - that is the feelings of the Gregson party were never far higher in your time than at this moment and

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Montagu and the rest of the Arthur party, Gregson became a member of the Legislative Council in 1843. Gregson remained critical of the convict system, and he was a strong proponent of the anti transportation league. Gregson was later elected Premier of Tasmania in 1856, though his administration lasted only two months. He remained in Parliament until his retirement in 1872. Gregson died two years later. See *ADB*, vol 1, p. 475. See also chapter 13 for his involvement in the 'patriotic six' movement.

<sup>538</sup> A distant relation only of Arthur's nephew, John Montagu. See chapter 5.

<sup>539</sup> *Ibid.*, p. 320.

<sup>540</sup> *Colonial Times*, 14 February 1837.

<sup>541</sup> Robson, *History*, p. 320.

<sup>542</sup> Gregson also owned several newspapers which were critical of the faction, including the *Hobart Town Advertiser*, and the *Colonial Times*. See Montagu Manuscript, p. 237.

<sup>543</sup> Lady Franklin to Mrs Simpkinson, 10 September 1842, MS 248/174/1-23. Later, Montagu indicated that Gregson was 'a particular friend of Lady Franklin'. See Montagu Manuscript, p. 237.

<sup>544</sup> Montagu to Arthur, 5 March 1838, Sir George Arthur Papers, 1821 - 55, vol 16, A2176.

unfortunately that party obtains countenance from some influential persons secretly - and those specially who have been intimidated and whose names would make you blush if I were to mention them... It will be satisfactory for you to know that Mr Pedder, the military, Mr Gregory and everyone not afraid of the press, is quite satisfied with his conduct and presently understand the system of falsehood and persecution which he is at present exposed'.<sup>545</sup>

In March, Montagu described Franklin's reaction:

'He had been so frightened of Gregson he knew not what he did. He trembled like a leaf, the perspiration ran down his face like a stream. His mouth was filled with saliva - almost to prevent him speaking. He was as pale as death!'.<sup>546</sup>

The jubilation which some of Arthur's critics hailed Franklin was short lived however and the new governor was exposed first hand to the fickle allegiance of the Van Diemen's Land press. Seizing the opportunity to dismiss Franklin's 'rebuff of the party' as a 'mere side-step of the real issue', the *Colonial Times* declared:

'The colonists, when Arthur left, anticipated a change of men and measures; but it is the lamentable doom of this ill fated colony to witness the very men who made Arthur a tyrant, now encircling and counselling the honest, the amicable Sir John Franklin'.<sup>547</sup>

There is no doubt Franklin was 'honest and amicable', brave, determined and 'would obey orders to the letter'.<sup>548</sup> He had received the approbation of his superiors in London following his exploratory feats, but lacked the experience and shrewdness of a penal colony governor. He also lacked the Colonial Office patronage of his distinguished predecessor, which undermined his authority among some of the more senior officials. There were ambitious subordinates who had long been suppressed by Arthur, and soaked up the responsibility bestowed upon them [out of necessity] by the new governor. Even

<sup>545</sup> *Ibid.*, 22 February 1837, vol 16, A2176.

<sup>546</sup> *Ibid.*, 5 March 1838, vol 16, A2176.

<sup>547</sup> *Colonial Times*, 4 April 1837.

<sup>548</sup> Fleming, *Barrow's Boys*, p. 126.

the Surveyor General, George Frankland, who was not publicly or even privately recognised as a member of the “faction”, wrote that Franklin was 'a very excellent and kind hearted man but the sort of responsibility vested in a Governor is quite out of his way'.<sup>549</sup> Opportunities presented themselves for further advancement, wealth, status and authority - Franklin had been warned, but what was he to do - penal politics was neither his domain nor his primary interest.

For all the uncharitable comments about Franklin published in the press, there were still some editors who held out promise for the new governor. The *True Colonist*<sup>550</sup>, published several days after the *Colonial Times*, declared:

'We entreat the public not to be deceived about Sir John - of the honest, open hearted candour of his character no man has ventured to raise a question; but inconsiderate men, who measure every Governor by the standard of the tyrant Arthur, who cannot distinguish talent from cunning; and others who, to support Arthur, seek to destroy public confidence in Sir John, foolishly or ignorantly say that the Governor is a weak man, and that he will be led by the old faction... Sir John Franklin is exactly the Governor we want, and the people will acknowledge it after he has felt his way a little, and we entreat the people not to be led away by the *Colonial Times*, because His Excellency does not at once, without consideration, subvert all the acts and turn out all the officers of his predecessors'.

After a turbulent start to his governorship, Franklin reported to the Secretary of State in March 1837 that 'an inconvenient degree of excitability of public feeling exist[ed] in the colony, which time and patience will alone, probably', he optimistically added, 'be able to tone down'.<sup>551</sup>

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<sup>549</sup> Frankland to Arthur, 7 October 1838, as quoted in Shaw, *Convicts and the Colonies*, p. 269.

<sup>550</sup> *True Colonist*, 7 April 1837.

<sup>551</sup> Franklin to Glenelg, 4 March 1837, as quoted in Robson, *History*, p. 19.

Franklin 'had come to the colony convinced he had been sent as a missionary of the spirit of the Reform Bill'<sup>552</sup>, but as time went on, he found no confirmation of this belief.<sup>553</sup> The division of opinion, which characterised the assignment debate, was brought immediately before his attention. 'I succeeded however to the inheritance of many a troublesome case', wrote Franklin, 'consequent upon the cessation of the free grant system, and many an importunate appeal for the reconsideration of former judgments, and in these, the opinions of my predecessor and the advice of those of his officers who were best acquainted with the subject had necessarily to be consulted'.<sup>554</sup>

Though transportation was a relatively minor issue in the 'philosophical mainsprings of the reforms carried out in the 1830's by an active British Ministry'<sup>555</sup>, Franklin could not have missed the debate being waged at the Colonial Office respecting the practice of assignment and the punishment and reform of the convicts.<sup>556</sup> In writing to tell an old friend of his appointment, Franklin perceived that 'the duties I expect will be arduous, and will require constant attention - but if by the blessing of God I am enabled to execute them properly, I shall not object to the constancy of the occupation'.<sup>557</sup>

The spirit of the Reform Bill pervaded his thoughts after the appointment. 'When I accepted the honourable post to which His Majesty was graciously pleased to appoint me', he declared, 'I felt a particular satisfaction, that my first administration of the duties of a Governor should be in a colony which, separated as it is by the widest of oceans from the land of our birth and our affections, is so essentially British in its origins, its elements and its interests - one, in which whatever may be of evil in its composition, is full of energies for transmitting that evil into good'.<sup>558</sup>

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<sup>552</sup> See chapter 1 for an explanation of the Reform Bill.

<sup>553</sup> Fitzpatrick, *Sir John*, p. 220.

<sup>554</sup> Franklin, *Narrative*, p. 7.

<sup>555</sup> Ritchie, 'Unclean Thing', p. 145. Other reform issues which gained momentum in Britain at this time included the protection of children working in factories, measures for the relief of the 'non conformist' religious denominations, improvements in the judicial system, a reduction in the number of capital crimes and improved regulations for the prisons and for the treatment of juvenile offenders. See S Reid, *The Prime Ministers of England*, (JM Dent, London, 1906), p. 107.

<sup>556</sup> *Ibid.*, p. 145.

<sup>557</sup> Fitzpatrick, *Franklin*, p. 31.

<sup>558</sup> Legislative Council Minutes of VDL, 1837-1844, 10 July 1837, SLTX/AO/JP/7, p. 1. Hereafter referred to as the Legislative Council Minutes of VDL...

Franklin also saw evidence of the changing nature of the colony; while still in London, Glenelg permitted him to open the doors of the Legislative Council to the public<sup>559</sup>; Franklin wrote:

'A measure which I felt required due deliberation, as it would inevitably involve the adoption of a similar measure in the other Australian colonies'.<sup>560</sup>

While Franklin had been first to admit the press unencumbered, Bourke had given the press the estimates of revenue and expenditure as early as 1832, which had been the object of a sustained attack ever since.<sup>561</sup> Meanwhile, Lord John Russell, Secretary of State at the Home Office, and a close associate of Glenelg, wrote<sup>562</sup> to the Commissioners for the Reform of the Criminal Code that 'assignment was uncertain as a punishment and unavailing as a deterrent, that it was identical to slavery in degrading the criminals as well as depraving the community in which they were placed'.<sup>563</sup> Russell 'claimed that his outlook had been shaped by the opinions of Governor Arthur and Chief Justice Forbes', though he did not agree with the wholesale abolition of transportation as espoused by Archbishop Whately and the other 'radicals'.

While a change of leadership and the introduction of political reforms was probably healthy for the colony, it was unfortunate that the Colonial Office invested so much responsibility in Franklin<sup>564</sup>, a man wholly inexperienced in colonial affairs, to oversee a problem that had vexed capable politicians and senior bureaucrats over a long period of

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<sup>559</sup> Franklin, *Narrative*, p. 9.

<sup>560</sup> *Ibid.*, p. 9. Franklin appears to impute that his was the first colony to open the doors of the Council to the public. This is not so; in 1832, Bourke admitted non-official members to the Legislative Council to 'insure to the inhabitants the proper degree of influence over the measures of the local government more especially in matters relating to taxation and expenditure'. According to historian ACV Melbourne, the governor's action 'seemed to be expressive of a disposition to liberalise the government'. See Melbourne, *Constitutional Development*, p. 177.

<sup>561</sup> Melbourne, *Constitutional Development*, p. 178.

<sup>562</sup> Letter dated 20 October 1836. See Ritchie, 'Unclean Thing', p. 158

<sup>563</sup> Ritchie, 'Unclean Thing', pp. 158-159.

<sup>564</sup> Although one could argue, and some have, that it was unfortunate any governor was vested with such responsibility. See Chapter 2 titled 'The Autocratic Governor', in Melbourne, *Constitutional Development*, p. 14.

time. In Van Diemen's Land too, there were many observers that thought they had the answer, and there were just as many waiting for an opportunity to stamp their own imprint on the system. He did not have too look to far - the two most senior officials in the colony had just emerged from Arthur's firm tutelage and were more than willing to assist the new governor find his feet.

By association alone it clear Franklin had some inkling of what lay ahead. After all, it was Glenelg who was instrumental in dispensing with the system of assignment a little over twelve months later; writing to both Franklin and Bourke in May 1837, 'Glenelg, who was expeditious in pursuing Russell's proposal of April 1837 to modify the transportation system'<sup>565</sup>, declared that

[I am] 'strongly impressed with the evils which appear to me to a certain extent inherent in the system of assignment'.<sup>566</sup>

An awareness of his master's opinions on the subject of transportation at home however afforded no warning of the complexities that existed in Van Diemen's Land. According to West, the 'lingering traces of discord in the colony were distressing for Franklin', and in an address to the inhabitants of Richmond shortly after his arrival in the island, Franklin expressed his anxiety about the whole situation:

'With my whole heart I agree with you. Let us be divided then, if we cannot be united in political sentiments, yet knit together as friends and neighbours in everything beside. Let us differ where honest men may differ; and let us agree, not in undervaluing the points of political dissent, but in respecting the motives which may produce it, in cherishing domestic virtues, which will be found to characterise individuals of very party, and in making the generous sacrifice of private feelings for the general good, rather than aggravating the importance of grievances, which must render such forbodence impossible.'<sup>567</sup>

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<sup>565</sup> *Ibid.*, p. 161.

<sup>566</sup> Glenelg to Bourke, 26 May 1837, *HRA*, I, XII, p. 763.

<sup>567</sup> West, *History*, p. 148.



Interestingly, Franklin's speech echoed to a degree Arthur's 24 February 1832 speech as reported by Boyes:

'may we always feel towards our enemies as if they were once to be our friends and towards our friends as if it were impossible they could ever become our enemies'.<sup>568</sup>

Franklin's sentiments however were spoken with an air of caution. Franklin reminded himself that Van Diemen's Land was a penal colony which existed under a system of convict management, which, he described, was one 'of great importance'.<sup>569</sup> Franklin likened his appointment to that of a new Prime Minister:

'[he] form[s] his own cabinet; he works with the instruments he finds around him, and who for a time have a great advantage over him from their superior local knowledge and experience'.<sup>570</sup>

Although he assured the colonists 'that he had come among them without prejudice, and determined to see with his own eyes, hear with his own ears, and judge with his own judgment', Franklin 'could not easily evade' the advice of Montagu and Forster, and the 'policy of their distinguished relative survived in his nephews'.<sup>571</sup>

If Franklin felt less confident about the success of a more liberal regime in Van Diemen's Land, he was equally disheartened about dealing with the officials of his own administration. It was early in his governorship that Franklin perceived Montagu supported him more in those measures 'that carried out the views of the late Lieut. - Governor, than in the efforts he made to conciliate the parties which were adverse to the

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<sup>568</sup> Chapman, *Boyes Diary*, pp. 544 - 5.

<sup>569</sup> Franklin, *Narrative*, p. 7.

<sup>570</sup> *Ibid.*, p. 7.

<sup>571</sup> West, *History*, p. 147.

government'.<sup>572</sup> Franklin however was hardly surprised given the nature of the government in Van Diemen's Land:

'This protracted administration, extending to double the usual period, had come in aid of other causes to give my predecessor a degree of influence and power unknown to any other Governor under the Crown'.<sup>573</sup>

Franklin concluded that he was forced to make allowances for Montagu's strong party feeling in 'consideration of his long service under Sir George Arthur, whose policy and feelings he had been trained to share'.<sup>574</sup> Franklin was well aware of the influence Montagu occupied in the colony above and beyond his official duties as Colonial Secretary:

'Mr Montagu had also another source of influence in the colony: this was his money - agencies in connexion with the Derwent Bank, a most influential establishment... Though his official situation in the colony prevented Mr Montagu from being a Director of the Bank, he represented in it, for himself and others, stock to a very large amount, and it was well understood in the colony that the manager of the Bank, Mr Swanston, conferred with him every important occasion, and that the Bank and the Colonial Secretary reflected and augmented each others influence. The extent of the Bank's dominion held half the colony in its thralldom'.<sup>575</sup>

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<sup>572</sup>Franklin, *Narrative*, p. 8.

<sup>573</sup>*Ibid.*, p. 6.

<sup>574</sup>*Ibid.*, p. 9.

<sup>575</sup>*Ibid.*, p. 8. Montagu corresponds regularly with John Clark Esq, Assistant Police Magistrate at Oatlands, and a large landowner near Bothwell, during Arthur's government. Clark seems to be an agent of the Derwent Bank and regularly informs Montagu of the status of certain debts incurred by some of the colonists. See William and John Clark Papers, Finance Miscellaneous Papers, RS 8/C15. It was also reported that Montagu's sons, John, George and Alfred, had six £100 shares in the Derwent Bank. See Fitzpatrick, *Franklin*, p. 255.

Charles Swanston was an influential member of the “faction”, and as a close friend of Montagu, played an active, albeit non-public role in the government of Van Diemen's Land.<sup>576</sup>

Indeed, as an indication of Montagu's personal wealth, *Murray's Review* wrote:

'Perhaps in few colonies have there been such splendid sales of household paraphernalia as that of Captain Montagu's a few weeks ago, and that which will take place of Mr Stephen's tomorrow. The former realised £5000; the latter is expected to realise the same amount. The cost of the drawing room equipment alone exceeded £1000. The pictures are well worth seeing, the wines well worth tasting'.<sup>577</sup>

Lady Franklin too perceived early in her residency where substantial power lay in Van Diemen's Land.<sup>578</sup> Though described by historian John Vincent Barry as possessing 'epistolary sprightliness' and a warning that her accounts 'should be taken with reserve'<sup>579</sup>, Lady Franklin's insights are nevertheless recorded with a sharp eye and a profound interest in the fate of those around her:

'Mr Montagu', she confided, 'is a most extraordinary man as a man of business; he has a facility adroitness and accuracy in it which is quite astonishing; has an immense deal of practical knowledge; knows everything about everybody's business as well as his own, and can answer, and that most accurately, any question you may put to him about anything or anybody'.<sup>580</sup>

Her sentiments were not solely reserved for Montagu. Referring to Forster, she continued:

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<sup>576</sup> Swanston's focus is in later years. See chapter 4 for his interests in the Port Phillip district, and also chapter 6.

<sup>577</sup> *Murray's Review*, 16 April 1839.

<sup>578</sup> Robson, *History*, p. 322.

<sup>579</sup> JV Barry, *Alexander Maconochie of Norfolk Island*, (Oxford University Press, Melbourne, 1958), p. 23.

<sup>580</sup> Lady Franklin to Mrs Simpkinson, 7 October 1837, MS 248/174/1-23.

'Capt. Forster, Chief Police Magistrate, who married another niece of Col. Arthur's is more open and downright in his manner, and in his character, though his enemies, say this is only a blind, and that he has the same peculiarities as the rest of the Arthur "faction". His is a bold fearless character open to conviction and ready to avow it come what may'.<sup>581</sup>

'With Mr Gregory, the Treasurer, brother to the long legged Dr George Gregory', she continued, 'another tall, long legged creature but fair instead of dark; just as fond of hearing himself talk as his brother is possessed some cleverness, and some self complacency, and like the others a very efficient man of business. These are the three', she triumphed, 'composing the Triumvirate or "Arthur Faction", or the "Grand Vizier", the "Aga of the Janissaries", and the "Pope" of the Newspapers'.<sup>582</sup>

It surprised Lady Franklin to learn however that Forster did not much like his appointment as Chief Police Magistrate and had earlier confided in Montagu that he would rather have been Director of Roads, having knowledge of surveying.<sup>583</sup>

Described by another historian as 'positive, restless, and possessing and incurably inquisitive mind'<sup>584</sup>, Lady Franklin took an active interest in public business, and once confided in her sister, Mary Simpkinson, that her husband's

'draft despatches are often submitted to me for correction or alteration - the present important despatch upon transportation adopts several ideas which I suggested. Dearest Mary, this is the profoundest of secrets. To you alone I tell it. It would be injurious in many ways that it should be known or suspected, were my father to know it, in the pride of his heart perhaps he would in some way or other let it out... To me there is no other gratification in my position than that I am enabled to be of some use to Sir John... You must not suppose that I think myself in a very extraordinary position and am a very

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<sup>581</sup> *Ibid.*

<sup>582</sup> *Ibid.*

<sup>583</sup> Lady Franklin to Mrs Simpkinson, 24 March 1837, MS 248/174/1-23.

<sup>584</sup> PW Boyer, *Souls and Minds*, Unpublished MA Thesis, History and Classics, University of Tasmania, 1972, p. 2.

wonderful person. I think quite the contrary. I suppose every woman whose husband is in public life helps him if she can and if he gives her the opportunity which he will not fail to do if he can trust in her ability and discretion, and as to the rest, no one knows half so well as myself the weakness of my faculties'.<sup>585</sup>

She added:

'My freshest and healthiest moments are given to the pressing things'.<sup>586</sup>

In particular, her attention was already drawn to the plight of the female convicts in the colony. She wrote:

'I think the whole system of female transportation - and particularly of female assignment in service - so faulty and vicious, that to attempt to deal with the women who are the subjects of it, seems waste time and labour. I have been always looking to have a little leisure to give to this subject more mature consideration, and as soon as I can do so, I will write to Mrs Fry'.<sup>587</sup>

Lady Franklin was of course referring to Elizabeth Fry, who took a lively interest in the condition of the prisons in England. Fry also contributed to the transportation debate<sup>588</sup>, and was critical of the lack of classification, employment and superintendence of the convicts both aboard the convict ships, and in New South Wales itself. Her social commentaries interested many observers, and had contributed to the political discussion that led to John Thomas Bigge's appointment as Commissioner in 1819.<sup>589</sup>

It was evident too that Lady Franklin was intrigued by the 'oft' [sic] spoken dreaded policy' of Montagu and Forster's distinguished relative. 'I am also very curious to hear', she wrote, 'to hear your account of Col. Arthur and his family. It seems so strange that

<sup>585</sup> Lady Franklin to Mrs Simpkinson, 13 February 1839, MS 248/174/1-23.

<sup>586</sup> Lady Franklin to Mrs Simpkinson, 4 October 1838, as transcribed by G Mackaness, vol 1, p. 36.

<sup>587</sup> *Ibid.*, p. 37.

<sup>588</sup> Born in 1780, Fry was a regular commentator in the House of Commons. See ed. L Stephen, *The Dictionary of National Biography*, vol vii, p. 734.

<sup>589</sup> See chapter 1.

you should know him before we do, who may, wide as our destiny's are perhaps cast for the future though similar at present, be ever unknown to us. I do not think there is much possibility that he should be appointed to New South Wales, but you know more on that matter than I do.<sup>590</sup>

Indeed, Lady Franklin could not see what all the fuss was about:

'I am told he is remarkably mild and quiet in his manners, but close and reserved to an excess', she declared: 'his wife I suspect was rather a weak though perhaps amiable person. And his children have been represented to me as none of the most promising'.<sup>591</sup>

Later, she also wrote:

'In Sir George Arthur's own family, the ladies in which I am informed were employed by him when it suited them to write for him. But they were stupid or silly, and I have the reputation (and a woeful reputation it is in the estimation of the weak minded and malicious and jealous men) to be very clever'.<sup>592</sup>

Lady Franklin also took some pleasure in telling her sister that Launceston colonist, Thomas Reibey, whose mother was a convict in New South Wales, had recently given his daughter's hand in marriage to Charles Arthur, Arthur's nephew; 'I cannot conceive', she asked, 'how the Arthur family can have been satisfied with the match'.<sup>593</sup>

Montagu's charm was wasted on Lady Franklin however, who recognised him as a man of 'good principles but exceedingly shrewd and not a little cunning with a great power of concealing his sentiments'.<sup>594</sup> Nonetheless, Lady Franklin considered Montagu a valuable

<sup>590</sup> Lady Franklin to Mrs Simpkinson 7 October 1837, MS 248/174/1-23.

<sup>591</sup> *Ibid.* Indeed, on occasions, Arthur treated his children with the same authority as he might his senior officers. Writing to Montagu in 1839, he stated: 'I promised dear Charles a watch - I wish you would purchase a neat silver one for him and send it to him with my love, and also, a less costly present for E and Sigismund'. See Arthur to Montagu, 2 January 1839, *Canadian Papers*, p. 5.

<sup>592</sup> Lady Franklin to Mrs Simpkinson, 10 September 1842, MS 248/174/1-23.

<sup>593</sup> Lady Franklin to Mrs Simpkinson, 22 February 1838, MS 248/174/1-23.

<sup>594</sup> Lady Franklin to Mrs Simpkinson, 7 October 1837, MS 248/174/1-23.

person and an equally valuable Colonial Secretary. Similarly, her sentiments were in turn lost on Sir John, who, initially at least, needed all the friends he could muster in high places if he was to survive in Van Diemen's Land.<sup>595</sup>

Despite his reservations, Franklin placed almost unlimited confidence in Montagu<sup>596</sup>, finding both he and Forster 'possessed of much talent for business and of great local knowledge'.<sup>597</sup> In his first address to the Legislative Council in July 1837, Franklin conceded that his 'defective local experience' had prompted him to 'readjust' the 'sanguine anticipations which I know have been formed regarding my future measures'.<sup>598</sup> Applauding the policy of the ex-governor and his officials, Franklin asserted that the 'prospects of the colony continue to be flattering', and that if he were to 'measure the future by the past, we shall assign to it a rapid improvement, and accumulation of wealth, almost without example in other colonies'.<sup>599</sup>

The opponents of Arthur listened in disbelief as the new governor implied that the imputations of personal injustice or corruption under the old regime were unfounded. While Franklin expounded the virtues of Church and education, the solemnisation of marriage, immigration and social and domestic virtues, the "faction" were in effect exonerated from the sinister motives attributed them by Arthur's opponents. It mattered little that Franklin said nothing about the convict system in a penal colony; 'the government officers had read him in a moment and were delighted to find the measure of his foot so easily'.<sup>600</sup>

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<sup>595</sup>Robson, *History*, p. 321.

<sup>596</sup>Franklin, *Narrative*, p. 9.

<sup>597</sup>*Ibid.*, p. 7.

<sup>598</sup>Legislative Council Minutes of VDL, 10 July 1837.

<sup>599</sup>*Ibid.*

<sup>600</sup>Maconochie to Sir George Back (Undated), as quoted in Fitzpatrick, *Franklin*, p. 127. Back was a good friend of both Maconochie and Franklin, and was to accompany Franklin on his ill-fated expedition to Canada in search of the North-West Passage in 1845.

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## 'A Bed of Thorns'

Turning to the affairs of government, Franklin initially appeared, especially in the eyes of those who were opposed to Arthur's administration, to align himself with the personal influence of the Arthur party or "faction".<sup>601</sup> In his first session as chair of the Legislative Council, Franklin opened its doors to press and public alike in accordance with Glenelg's instructions.<sup>602</sup> Conventional accounts of the opening however incorrectly credit Franklin alone for the proposal, which had been under consideration by the Colonial Office for several years. Bourke had already taken the unprecedented step of providing the press with his estimates of revenue and expenditure, and as early as 1831, Arthur was presented with a petition requesting public access to the proceedings of the Legislative Council as was the case in New South Wales.<sup>603</sup> Consequently, the Colonial Office advised Arthur that it would give some consideration to the matter, although it waited until Franklin's appointment before acting on the measure. In the course of his first address to the Council, Franklin 'took both pride and pleasure in bringing publicly forward an eulogium of his predecessors administration'<sup>604</sup>, which met with the 'general approbation' of the

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<sup>601</sup> Franklin, *Narrative*, p. 9.

<sup>602</sup> *Ibid.*, p. 9. According to West, the 'benches were generally deserted of all but the newspaper reporters... The principle of open debate is, however, invaluable: the public could read in an instant what it required hours to gather' (West, *History*, p. 149). Later, Franklin regretted the decision: in November 1840, Franklin told Russell: 'the tendency of opening the doors of such a Council to the public is to subject the unofficials to the control of the public to the extent which perhaps does not exist were they really representative. The conviction is that he is the nominee of the Crown, and therefore suspected to have a bias in favour of its views which may impair a members firmness and make him aim almost unconsciously by an uncompromising opposition, to give a striking and undeniable demonstration of his independence' (Franklin to Russell, 19 November 1840, as quoted in Korobacz, *Legislative Council*, p. 125). Arthur agreed; he had told Goderich in 1833 that extensive publication of Council proceedings or the admission of strangers would bring too much attention to the Legislative Council. 'The malcontents', he continued, 'through their medium of the press, would take every opportunity to cause the government trouble by calling forth a strong expression of public feeling originating opposition to measures which would otherwise have been unanimously adopted'. Arthur concluded that opening proceedings to the public could do nothing but weaken his government (Korobacz, *Legislative Council*, pp. 99-100).

<sup>603</sup> Robson, *History*, p. 309.

<sup>604</sup> *Ibid.*, p. 9. The address was an 'honourable testimony borne to Arthur in a reply to a despatch which he had addressed to Lord Glenelg on his recall', and which was contained in a duplicate despatch addressed to Franklin.



entire Council, and in particular the relatives of Arthur.<sup>605</sup> Predictably, some members of the press gallery<sup>606</sup> reacted vehemently towards Franklin, declaring that the “faction” were the ‘real legislators and the real Governor’<sup>607</sup>, while Franklin reported that others condemned his speech ‘as a gratuitous intrusion of a topic not acceptable to all’.<sup>608</sup>

The *Colonial Times* was no less damning:

‘In the proceedings, the Colonial Secretary is clearly, palpably and tangibly the Magnus Apollo of the Council; he features invariably and unequivocally as the unflinching advocate of any government measure’.<sup>609</sup>

Not one to let the moment slip without recording her thoughts, Lady Franklin described the ‘present [as a] moment of great public excitement, a great effort is being made to overturn the hated Colonial Secretary, and the Chief Police Magistrate, hated chiefly because, [they are] Colonel Arthur’s relations and officers’.<sup>610</sup>

Before long, Franklin, who lacked the colonial experience and political skill developed by Arthur, found himself floundering at the feet of his own officials. Arthur had warned Franklin of the necessity of maintaining a tight hold on the reins of government:

‘It would certainly be as unwise in you as it would be unwarrantable in me to expect that you should involve yourself in an individual controversies on my behalf, so that if my supporters become your supporters, I shall very sincerely rejoice, provided you can secure them without weakening your influence in other quarters’.<sup>611</sup>

<sup>605</sup> *Ibid.*, p. 10. In April, Montagu wrote to Arthur that ‘you will be gratified by the way in which he alludes to you in his despatches’. See Montagu to Arthur, 13 April 1837, as quoted in Fitzpatrick, *Franklin*, p. 123.

<sup>606</sup> Principally Gilbert Robertson, writing for the *True Colonist*, who was at loggerheads with the sometimes pro-government *Colonial Times*. See also chapter 4, p. 34.

<sup>607</sup> *True Colonist*, 28 July 1837.

<sup>608</sup> Franklin, *Narrative*, p. 10.

<sup>609</sup> *Colonial Times*, 10 October 1837.

<sup>610</sup> Lady Franklin to Mrs Simpkinson, 22 February 1838, MS 248/174/1-23.

<sup>611</sup> Arthur to Franklin, Undated, Sir George Arthur Papers, 1821 - 55, vol 5, A2165.

According to Victor Korobacz in his study of the Legislative Council, the members of the Legislative and Executive Councils, especially the non officials, spoke on all matters, whether informed on the subject of debate or not. And by the end of the 1830's it seems the standard of debate had declined.<sup>612</sup> Korobacz also observes that Franklin allowed the Legislature to deal with matters which had normally been discussed in the closed Executive Council, such as pensions and compensation.<sup>613</sup> Indeed, it had become something of an 'antipodean variant of the House of Commons'!<sup>614</sup>

Unfortunately for Franklin, Montagu and Forster took advantage of his inexperience, since it added to their own 'personal influence'.<sup>615</sup> Even the step of opening the proceedings of the Legislative Council to the public rebounded on the governor because his indecisiveness there weakened his authority among those members more accustomed to Arthur's 'despotic and self-seeking control'.<sup>616</sup> It also had the effect of arousing wildly inappropriate expectations amongst a population experienced in such matters, and who were equally disappointed when they read pages and pages of dreary discussion instead of passionate debates. Chief Justice Pedder anticipated that the colonists would be disappointed, and later commented that some of Franklin's reforms were 'premature' in a penal colony.<sup>617</sup> Arthur had never exposed himself to such criticism; with a Council so constituted it could not be otherwise, but during Franklin's administration the "faction" appeared prominent simply because they were still there, and appeared to be unchallenged by anyone, including the governor. In hindsight the experiment of admitting the press was a failure, though Franklin was guilty of nothing more than being more progressive than most of his administration and critics.

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<sup>612</sup>Korobacz, *Legislative Council*, p. 162. According to Korobacz, the press constantly placed the non-official members into an identifiable opposition in order to keep the Executive in check (p. 178).

<sup>613</sup> V Korobacz, 'The Legislative Council in Van Diemen's Land', *Tasmanian Historical Studies*, vol 20, (1974), p. 12. Hereafter noted as 'Legislative Council'.

<sup>614</sup> *Ibid.*, p. 13.

<sup>615</sup> Franklin, *Narrative*, p. 9.

<sup>616</sup> Robson, *History*, p. 374. See also West, *History*, p. 140, and Korobacz, *Legislative Council*, p. 125, 163). In 1836, at the end of his regime, Arthur claimed with pride that 'although questions admitting the greatest diversity of opinion have... often been brought under discussion, I have never been defeated in any measure which I have anxiously desired to forward... With one exception, I never proposed any measure... during 11 years which was not carried through the Council by a large majority' (Arthur to Glenelg, 25 October 1836). In contrast, Franklin lost three government bills in the Council chamber in 1839 (p. 133).

<sup>617</sup> See p. 299 for an analysis of Pedder and his conservatism.

Later in the year, Montagu told Arthur that 'the high qualities which were so conspicuous in Sir John... at the North Pole, have not accompanied him to the South'<sup>618</sup>, and indicated that he felt compelled to offer guidance and assistance on every matter. Indeed, Montagu later himself confirmed what some in the press had already suspected:

'As the principal executive officer of the Govt. I was as usual entrusted with the conduct in Council of every Govt. Bill and measure, some of them were very important and difficult, and carried them all through every stage to completion in the manner Sir John Franklin desired for which I received his thanks at the termination of my service... In the Executive Council it had always been Sir John Franklin's practice to refer the minutes to me for information, and in nine cases out of ten to ask me my opinion and advice first, and if the other members concurred with me, it was recorded as the opinion and advice of the Council'.<sup>619</sup>

Montagu however sensed trouble not from Franklin, but from his Personal Secretary, Maconochie, a post he himself had held as a junior officer in the early years of Arthur's administration.<sup>620</sup> Maconochie, only one year younger than Franklin, accompanied the new governor to Van Diemen's Land, and carried with him a request from the Society for the Improvement of Prison Discipline to

'make such general remarks as occur on the whole convict system of the colony, and its effect on the moral and social state of the community; also, remark on the moral and social state of the community: also remark on the effect of the latter, and enter on the subject largely, making any observation which may be useful in regard thereto'.<sup>621</sup>

Maconochie was a logical choice to conduct the investigation; he was intelligent, a friend of the governor's and possessed a keen interest in the sciences, and before leaving England, he had held the office of Secretary of the Royal Geographical Society, and

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<sup>618</sup> Montagu to Arthur, 9 December 1837, Sir George Arthur Papers, 1821 - 55, vol 15, A2175.

<sup>619</sup> Montagu to Stanley, 31 January 1842, Montagu Manuscript, p 61.

<sup>620</sup> See p. 93.

<sup>621</sup> West, *History*, p. 463.

Professor of Geography at the University College, London.<sup>622</sup> Maconochie referred the Society's request to Sir George Grey, Under Secretary of State for the Colonies, who consented to the request, so long as all the papers on the subject were passed through the usual channels to the Colonial Office.<sup>623</sup> Notably, the Society also sent a number of questions to Governor Bourke in New South Wales in April 1837, answers to which he forwarded to Glenelg in December.<sup>624</sup>

Writing to Arthur in February 1837, only one month after Franklin's arrival, Montagu commented:

'I like Sir John very much. He is open, generous, firm and perfectly honest - but he is in very bad hands, and his Private Secretary, who is a very different person, will ruin him in twelve months and make his government a bed of thorns'.<sup>625</sup>

Maconochie's commission coincided with the reformist movement in Britain to appoint a committee to inquire into the subject of transportation and prison reform, among other proposals.<sup>626</sup> In May 1837, Glenelg sent a despatch marked separate and confidential<sup>627</sup> to both Bourke<sup>628</sup> and Franklin<sup>629</sup> asking them to examine the convict assignment system in detail and to send him any proposals which they had for replacing it.<sup>630</sup> One month earlier, Russell, then Secretary of State at the Home Office, told Glenelg that it was his wish to 'diminish, as much as possible, the number of transports sent yearly to the Australian colonies, [and of] concerting with Lord Glenelg the best manner of disposing in future of such diminished number, with a view of making the punishment of transportation uniform and formidable to all offenders'.<sup>631</sup> In reply, Glenelg wrote:

<sup>622</sup> Shaw, *Convicts and the Colonies*, p. 269.

<sup>623</sup> *Ibid.*, p. 463 and also p. 597.

<sup>624</sup> Bourke to Glenelg, 4 December 1837, as reported in the British Parliamentary Papers (Transportation), Vol 3, Sessions 1837 - 1861, Appendix to Report from the Select Committee on Transportation, p. 230

<sup>625</sup> Montagu to Arthur, 22 February 1837, Sir George Arthur Papers, 1821 - 55, vol 16, A2176.

<sup>626</sup> Ritchie, 'Unclean Thing', p. 158.

<sup>627</sup> Dated 26 May 1836, as referred to in Bourke to Glenelg, 22 November 1837, *HRA*, I, XIX, p. 187.

<sup>628</sup> *Ibid.*, 26 May 1836.

<sup>629</sup> *Ibid.*, 20 May 1836.

<sup>630</sup> I Brand, *The Convict Probation System*, (Blubber Head Press, Hobart, 1990), p. 9.

<sup>631</sup> Phillipps to Stephens, 15 April 1837, Accounts and Papers of the Select Committee on Transportation, Vol XXII, pp. 310 - 313 (Microfilm).

'[I] entirely... concur in the opinion entertained by his Lordship of the evils generally arising from the assignment of convicts in the Australian colonies. [I am of the] opinion that the substitution of an extensive system of free emigration for transportation as a means of supplying the demand for labour in New South Wales and Van Diemen's Land, and especially in the former of those colonies, is calculated to have a most important and beneficial effect on the state of society and the future interests of that portion of Her Majesty's possessions'.

Glenelg was apprehensive about the effects of the abolition of assignment in the colonies:

'In the event of the discontinuance of the system of assignment, the expense of maintaining the convict during the whole period of his sentence will have to be defrayed by the public, and that if the number of convicts in either of the colonies should be considerably greater than can be beneficially employed on the public works, a heavy expense will be incurred by the establishment and maintenance of a penitentiary system there, in addition to the expense of transportation... Therefore,... if assignment is altogether to be discontinued, it will be necessary that the number of convicts to be sent to the Australian colonies should be limited by the means from time to time existing for their profitable employment on public works... It will be necessary to provide some adequate system of punishment in this country for the far greater portion of those who would be under the existing system be transported.'<sup>632</sup>

Russell was proved to be right, and had he acted on Glenelg's recommendations, then the probation system, which followed assignment as the principal system of convict management in the colony, might never have been implemented. Indeed, Charles Joseph Latrobe, in his damning 1847 report into the probation system, observed that

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<sup>632</sup> Stephen to Phillipps, 29 April 1837, Accounts and Papers of the Select Committee on Transportation, Vol XXII, pp. 310 - 313 (Microfilm).

'after the experience gained, it might seem, that it were better that the heavier portion of his punishment should be awarded in the country which has witnessed the crime, which possesses all the means of estimating closely the necessary expenditure, commands the full power of facilitating and perfecting the arrangements for his punishment with complete security to herself, for after all, Millbank or Parkhurst may be as secure and as isolated for the prisoner, as Norfolk Island or Tasman's Peninsula... at no more cost than the cost of transportation'.<sup>633</sup>

In New South Wales, replying to Glenelg's despatch, Bourke explained that he had 'issued a warning [to] the colonists of the intention of Her Majesty's Government to discontinue at the earliest practicable period the assignment of convicts to private settlers, and pointing to the necessity of their looking to immigration as the source from which to obtain the requisite supply of labour'.<sup>634</sup> Bourke added that 'under this system, ten thousand convicts might be employed with great benefit to this colony' upon the public works, though, like Arthur, he warned Glenelg that the 'colonists would [not] willingly contribute to this enlarged expenditure on public works in the proportion they now bear, if at the same time the expenses of gaols and police be borne by them, and the whole produce of the land revenue be applied to immigration'.<sup>635</sup> Bourke assumed that the abolition of assignment to private settlers would 'necessarily limit the transportation of offenders by almost five-sixths of the number usually sent out', and for that reason, he recommended that the abolition of assignment should be gradual, as the 'sudden interruption of the accustomed supply of labour would occasion much distress'.<sup>636</sup> Bourke's comments mirror those of Arthur, who, in 1832, reported that the 'public works were of all conditions that in which the convict was subject to the greatest hardship' and if well managed, formed a 'most desirable form of punishment'. Arthur added however that though a greater punishment, such a system would be less reformatory than

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<sup>633</sup> Latrobe to Grey, 31 May 1847, as reproduced in Brand, *Probation System*, p. 129.

<sup>634</sup> Bourke to Glenelg, 18 November 1837, as referred to in Glenelg to Gipps, 30 June 1838, *HRA*, I, XIX, p. 462.

<sup>635</sup> Bourke to Glenelg, 22 November 1838, *HRA*, I, XIX, p. 188.

<sup>636</sup> *Ibid.*, p. 188.

assignment, and that the government must decide whether it was willing to bear the increase in cost.<sup>637</sup>

In Van Diemen's Land, Franklin and his personal secretary, who had already begun considering the system, differed as to how and when assignment should be abolished. According to West, when Maconochie left Great Britain, he professed 'a freedom from decided bias and to favour the general system of Arthur, rather than that propounded by Archbishop Whately'.<sup>638</sup> Indeed, Maconochie later wrote that

'in all our conversations [with Franklin] during the passage out regarding the controversy between Archbishop Whately and Colonel Arthur on the subject, I uniformly supported the latter's views'.<sup>639</sup>

Lady Franklin also recorded that Franklin, Maconochie, and the *Fairlie's* captain, spoke often about the condition of the convicts in New South Wales, and in particular, read passages from John Dumore Lang's recent publication on New South Wales.<sup>640</sup> Maconochie formed a markedly different view however during the course of his investigations in the colony.<sup>641</sup> The completion of his first report, titled Report on Convict Discipline No. 1, was exceedingly rapid<sup>642</sup> and damning of the assignment system. Maconochie's report comprised 15 points of criticism of the assignment system, and argued that assignment labour was 'coerced or slave labour', and was 'subject to all the discomforts and moral degradations incident to such a condition'.<sup>643</sup> Maconochie further declared:

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<sup>637</sup> AGL Shaw, 'The Origins of the Probation System In Van Diemen's Land', *Historical Studies*, vol 6, (1953), p. 23.

<sup>638</sup> West, *History*, p. 463.

<sup>639</sup> Report on Convict Discipline, No. 1, contained in Franklin to Glenelg, 7 October 1837, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 435.

<sup>640</sup> Lady Franklin's Journal, 29 September 1836, MS 248/84. The full title of the work is *An Historical and Statistical Account of New South Wales Both as a Penal Settlement and a British Colony* (1834). Lang, a Clergyman, was also a vocal politician in New South Wales, and campaigned for the rights of emancipists and free settlers alike.

<sup>641</sup> Brand, *Probation*, p. 9.

<sup>642</sup> The report is dated 20 May 1837. The report is contained in Franklin to Glenelg, 7 October 1837, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 435.

<sup>643</sup> *Ibid.*, p. 419.

'The great majority of convicts do not, however, reform under the existing convict arrangements... on the contrary, they are deteriorated by it... His master is, at the same time, rarely indulgent; he is accustomed to find his convict servants evade their work whenever possible; and he regards all excuses, therefore, with suspicion'.<sup>644</sup>

Maconochie added:

'It is cruel, uncertain, prodigal; ineffectual either for reform or example; can only be maintained in some degree of vigour by extreme severity'.<sup>645</sup>

Maconochie submitted a 'remedy' for consideration by the home government, and listed 18 suggestions for the improvement of transportation to Van Diemen's Land. Maconochie proposed secluding the convicts in stations undergoing hard labour and adequate 'moral, religious, mechanical and agricultural instruction'.<sup>646</sup> Awarded a 'fixed number of marks of commendation' for good behaviour, Maconochie expected that by passing through this course of probation, the convicts would forever lay their 'evil passions and propensities' to one side.<sup>647</sup> Maconochie spoke favourably of the secondary punishment model at Port Arthur<sup>648</sup> as the preferred means of punishment, where, he suggested, the convicts could work out their 'redemption together'.<sup>649</sup>

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<sup>644</sup> Report on Convict Discipline, No. 1, A Maconochie, 20 May 1837, contained in Franklin to Glenelg, 7 October 1837, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 437.

<sup>645</sup> *Ibid.*, p. 439.

<sup>646</sup> Summary of Papers on Convict Discipline Sent Home by Captain Maconochie, RN, contained in Franklin to Glenelg, 7 October 1837, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, pp. 423 - 424.

<sup>647</sup> A Maconochie, Report on Convict Discipline, No. 1, 20 May 1837, contained in Franklin to Glenelg, 7 October 1837, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 424.

<sup>648</sup> *Ibid.*, p. 436.

<sup>649</sup> West, *History*, p. 466.



Franklin forwarded Maconochie's first report to his senior officials for comment before Glenelg's 20 May despatch had even reached the colony.<sup>650</sup> Up until this time, Franklin had only been an interested observer, although Maconochie's inquiries prompted him to look more closely at the convict system.<sup>651</sup> Maconochie received support from Captain Alexander Cheyne<sup>652</sup>, the Director of Public Works, but the Chief Police Magistrate and the Treasurer argued in favour of assignment, though perhaps with an initial period of 'coercion' in gangs.<sup>653</sup> Governor Bourke, who also received a copy of the request, was more accommodating to Maconochie's views, and in July 1837, wrote:

'Your paper on the convict system has been once carefully read over. I fully agree in the representation you make of the evils which result from that system under its present form... The whole subject is worthy of the careful consideration of a statesman and philanthropist. I am glad to find you have taken it in hand'.<sup>654</sup>

Significantly, he also added:

'I hardly think that convicts can be longer sent out to this part of New Holland'.<sup>655</sup>

Attorney General Alfred Stephen, a curious onlooker, also commented that 'you have truly sketched the main features, to admit of their not being recognised', although he did preface this with the observation that Maconochie had over dramatised the evils of the

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<sup>650</sup> Franklin to Glenelg, 7 October 1837, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 433. West also wrote that Franklin referred the queries of the society to an official board, which consisted of Forster, Cheyne and Spode. See West, *History*, p. 466.

<sup>651</sup> Shaw, *Convicts and the Colonies*, p. 269.

<sup>652</sup> A Cheyne, Observation on the Condition of the Convicts in Van Diemen's Land, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 484. Cheyne was born in England in 1785 and after a distinguished military career, migrated to Western Australia in 1835. One year later, he sailed for Van Diemen's Land, where he became Director General of Roads and Bridges. See *ADB*, vol 1, p. 219.

<sup>653</sup> For Forster and Gregory's minutes, see British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, pp. 495 - 533.

<sup>654</sup> Bourke to Maconochie, 6 July 1837, as reported in the British Parliamentary Papers (Transportation), vol 6, Sessions 1810 - 1841, p. 426.

<sup>655</sup> *Ibid.* Bourke was referring to New South Wales.

convict system.<sup>656</sup> Franklin forwarded these reports and official opinions with his own views in a packet to the Colonial Office in October 1837, although he suggested that some of Maconochie's observations about the colonists and the way in which they supposedly treated their convict servants were not strictly correct.<sup>657</sup> The greatest emphasis of his report however was on the importance of assignment and transportation generally to the colony, and that as governor of Van Diemen's Land he readily availed himself 'for its improvement, or whatever useful suggestions may have been made on either side of the question'.<sup>658</sup> Further, Franklin argued that the interests of the colony, 'physical rather than moral', were totally dependent on the labour of the convicts, and that he was suspicious of any 'untried experiments proposed in its stead'.<sup>659</sup> It was a significant statement, and demonstrated that transportation was still critical to the growth and development of the colony, and was of enough importance to stake not only his own reputation upon, but that of the government and the colonists as well. Franklin also enclosed five recommendations as to the future management of the convicts in the colony, including the abolition of domestic assignment, working the convicts in gangs prior to assignment in the agricultural districts, a revised ticket of leave provision and a proposal for providing clearly identifiable clothing for the convicts. By now, Maconochie had produced two more reports titled 'A Supplement to the Report on Convict Discipline', and 'A Reply to the Observations on the Report by Mr Forster', which were included in Franklin's packet. In his second report, Maconochie proposed a marks system whereby a convict who exhibited good behaviour was awarded 'marks', and after he had accumulated a set number of marks, was given certain indulgences or even freedom. It was certainly a novel approach to discipline, and represented a genuine contribution to penal science. Together with his first report, the supplements were referred to collectively as the 'Report on the State of Prison Discipline in Van Diemen's

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<sup>656</sup> Stephen to Maconochie, 17 August 1837, as quoted in Barry, *Maconochie*, p. 49. Stephen and his opposition to the faction is discussed in chapter 5.

<sup>657</sup> Franklin to Glenelg, 7 October 1837, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 433. See also Robson, *History*, p. 323. Franklin's report is titled 'Convict Discipline in Van Diemen's Land'.

<sup>658</sup> *Ibid.*, p. 434.

<sup>659</sup> *Ibid.*, p. 434.

Land by Captain Maconochie'.<sup>660</sup> Franklin also forwarded a private letter by Maconochie to Lord John Russell<sup>661</sup> - and a *summary* of his views on the convict system and transportation, and the penal system in England, by the same vessel.<sup>662</sup> Maconochie told his friend George Back in England that he had written the 'summary' because he feared that in the 'bustle' that would be 'excited', his 'voluminous submissions' would 'perish in the Colonial Office'. The summary, he continued, was for this reason given more 'lubrications' and 'importance'.<sup>663</sup> The letter and summary were not addressed to Russell but to Sir George Grey, with a request for Sir George to refer them onto Russell.<sup>664</sup> Maconochie explained that this was exactly as he had been told:

'Sir George [Grey] was the Under Secretary with whom the whole business of reporting had been arranged. He had used these very words: "We desire no concealments whatsoever, our object is truth, the whole truth, but we must require it to come to us first, the inconvenience is very great of statements from authority first meeting us outside". In this way I was precluded from writing direct to the Prison Discipline Society, and was compelled in everything I did to confine myself strictly to Sir George Grey'.<sup>665</sup>

The summary however assumed a greater significance than Maconochie had bargained for, and according to historian John Barry, brought 'about the final rupture' of Maconochie's relations with Franklin.<sup>666</sup> Having written the summary, Maconochie explained to Franklin that he had 'prepared the annexed statement of my unassisted impressions', and that he would be pleased if he gathered 'comments on it of the members of the Executive Council, and such other individuals of the colony'. Maconochie added that they were the 'principles rather than the details of the existing convict management',

<sup>660</sup> See Franklin to Glenelg, 7 October 1837, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 415.

<sup>661</sup> Maconochie's letter is dated 30 September 1837, and is reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 417.

<sup>662</sup> Maconochie's summary, titled 'Summary of Papers on Convict Discipline, Sent Home by Captain Maconochie, RN', is undated, and is reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 419.

<sup>663</sup> Maconochie to Back, 14 March 1839, as quoted in Barry, *Maconochie*, p. 53.

<sup>664</sup> Barry, *Maconochie*, p. 53.

<sup>665</sup> Maconochie to Back, 14 March 1839, as quoted in Barry, *Maconochie*, p. 53.

<sup>666</sup> Barry, *Maconochie*, p. 51.

and in fairness to Maconochie, warned Franklin that the observations were 'extremely unfavourable to the present convict system'.<sup>667</sup>

It seems however that he did not tell Franklin about the letter to Russell, and in a second letter to George Back, Maconochie wrote:

'I did not tell Sir John that the MS contained a hypothetical letter to Lord John Russell'.<sup>668</sup>

Maconochie's wife Mary recorded that Franklin naturally hesitated in sending the packet to Grey:

'Because his, Alexander's, opinions were unfavourable to the present mode of management, he (Sir John) actually scrupled to send them as they offended the authorities here. However, Alexander [Maconochie] insisted, and with much difficulty they were sent'.<sup>669</sup>

In his own letter to Grey, which formed part of the packet containing Maconochie's three reports, the letter to Russell and the summary, Franklin was adamant that he had not in fact read the summary, but acknowledged its existence:

'Captain Maconochie having offered his original opinions in three separate papers had drawn up a précis on them - which at his request I forward by this conveyance. I have not read it but shall before the duplicates are forwarded and if I should find anything requiring my comment I can then make it'.<sup>670</sup>

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<sup>667</sup> Maconochie to Franklin, 20 May 1837, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 435.

<sup>668</sup> Maconochie to Back, 14 November 1839, as quoted in Fitzpatrick, *Franklin*, p. 157.

<sup>669</sup> Mrs Maconochie to Back, 30 April 1839, as quoted in Barry, *Maconochie*, p. 53.

<sup>670</sup> Franklin to Grey, 7 October 1837, as quoted in Barry, *Maconochie*, p. 54. This letter was sent with the main 7 October 1837 packet containing all the reports etc.

Franklin cautiously added that the summary 'should be examined carefully by some confidential person of your department. The printing and promulgation of such opinions would undoubtedly give pain to many respectable inhabitants here'.<sup>671</sup>

Having already sent his October 1837 report to Glenelg, Franklin finally received Glenelg's May despatch in November. Franklin understood that the Colonial Office was contemplating the early discontinuance of the system of assignment, and that he thought it was a 'question of vast importance'.<sup>672</sup> Franklin added little to what he had already written in his previous reports, though he stressed

'that the immense extent of available territory still remaining open for sale in the colony of New South Wales creates a diversity in the condition of the two colonies, which must be attended by corresponding diversity in both their penal and their immigration systems, and probably, at least as regards the present question, in the general administration of their government'.<sup>673</sup>

Franklin was increasingly aware of the importance of assignment in the development of the colony, and while the demand for labour was not as high as it had been during Arthur's government, the majority of colonists were dependant on cheap labour, particularly the land owners and agriculturalists, who continued to draw convicts of the government in the absence of cheap and willing immigrants. Unfortunately for Franklin the system of assignment was under intense scrutiny in England, and his proposal for its continuation in the colony was potentially damaging for the government in England, which was facing strong opposition in Parliament.

Unfortunately for Franklin, this opposition was about to spread to Van Diemen's Land. Despite his instructions to caution about publication, and regardless of whether Franklin knew about the contents of the summary or not, it was subsequently tabled in the House

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<sup>671</sup> *Ibid.*, p. 54.

<sup>672</sup> Franklin to Glenelg, 9 December 1837, Appendix to the Report from the Select Committee on Transportation, as reported in the British Parliamentary Papers (Transportation), Sessions 1837 - 1861, vol 3, p. 262.

<sup>673</sup> *Ibid.*, p. 263.

of Commons<sup>674</sup>, published, and appeared in the London papers, and created a sensation in the colony.<sup>675</sup> James Stephen at the Colonial Office had referred the entire contents of the packet to Russell at the Home Office, who was a member of the Secondary Punishment Committee established in April. Grey never received the letter or abstract, and on 9 March 1838, the whole packet was sent to the government printer with the instruction:

'This is to be printed immediately Stat. Office and proof sent to me'.<sup>676</sup>

Now, acutely embarrassed by the English newspaper reports of the publication, which included the phrase 'assignment was worse than slavery', Franklin claimed he had been 'duped and embarrassed' by Maconochie and decided to dismiss him from the office of Private Secretary.<sup>677</sup> Franklin denied all knowledge of the summary, and argued that it should never have been sent to the Colonial Office, let alone appear in the English press. According to West, 'it deprived the Governor of a long and cherished friend, who, in happier circumstances, might have greatly facilitated his affairs.'<sup>678</sup> Lady Franklin acknowledged the loss also, later reflecting that

'I never above half liked either [Forster] or Mr Montagu and it was on this account that I valued the counteraction... and union offered by Capt. Maconochie, and deplored his separation.'<sup>679</sup>

Notably, Lady Franklin also urged her sister back in London not to speak on the matter, and in particular with the Hamiltons<sup>680</sup>, who had recently returned to England. Lady Franklin reported that the Hamilton's are in 'intimate communication with Mr Montagu

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<sup>674</sup>Robson, *History*, p. 323.

<sup>675</sup>The press reports reached Hobart in September 1838. See West, *History*, footnote 276, p. 464. Predictably there was an uproar; see chapter 5.

<sup>676</sup>Barry, *Maconochie*, p. 55.

<sup>677</sup>Robson, *History*, p. 324.

<sup>678</sup>West, *History*, p. 149.

<sup>679</sup>Lady Franklin to Mrs Simpkinson, 26 December 1839, MS 248/174/1-23.

<sup>680</sup>William Henry Hamilton - the "faction's" banker. Hamilton was born in England in 1790, and migrated to Van Diemen's Land in 1823. After fulfilling the roles of police magistrate at New Norfolk and Acting Colonial Secretary, Hamilton returned to England in 1832 to become the London representative of the Derwent Bank. See *ADB*, vol 1, p. 508.

who manages all Mr Hamilton's affairs in this country, from which I understand he derives his income'.<sup>681</sup>

Maconochie however protested that he was innocent, and argued that he had not in fact concealed the summary from Franklin as was generally believed:

'I took it accordingly to Sir John, told him it was to Sir George [Grey], and that it was an abstract of my other papers; begged him to forward it, and had a warm discussion with him on the subject. At length he consented, but at the moment wrote a private note to Sir George telling him that he had not seen it, knew nothing of its contents, and begging him to give it no priority of examination'.<sup>682</sup>

Writing several years later, John West supported Maconochie's assertions that Franklin knew about the summary:

'the imputation of duplicity was unjust; Franklin was not wholly ignorant of the contents of the packet'.<sup>683</sup>

While some modern historians, most notably Kathleen Fitzpatrick, have insinuated that Maconochie concealed the existence of the summary from Franklin<sup>684</sup>, the reality is that Franklin at least knew about its existence, even if he did not bother to read it. As a governor he should have known better, and at any rate, the rest of the package was hardly complimentary of his convict system, so what made him think that the letter and summary would be any different?

In any case, as soon as the news of Maconochie's dismissal was made public, the colonial press 'lauded' Maconochie as a victim of the 'machinations' of the Arthur

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<sup>681</sup> Lady Franklin to Mrs Simpkinson, 7 October 1837, MS 248/156.

<sup>682</sup> *Ibid.*

<sup>683</sup> West, *History*, p. 468.

<sup>684</sup> Which according to Franklin's letter is not true.

“faction”.<sup>685</sup> It was alleged in the *True Colonist* that the Arthur “faction” had instigated a press attack on Maconochie in the *Colonial Times*<sup>686</sup>:

‘That journal was used by the faction against Captain Maconochie exactly in the same manner... as against Mr Alfred Stephen [in the Clapperton case], and against every honourable and liberal minded man whom it suits their purpose to persecute and annoy.’<sup>687</sup>

And later:

‘The removal of Captain Maconochie, as affording evidence of the complete triumph of the faction over Sir John, had destroyed the last lingering hopes of the colonists that Sir John would ever assume the real authority of his office, and realise any of the high expectations founded on the character which he had previously attained.’<sup>688</sup>

The *Hobart Town Courier* came to the government's defence:

‘If the Arthur faction be those officers who zealously endeavour by every means in their power to carry out Sir John Franklin's views upon all subjects connected with his government of this colony - if the term alludes to those officers who devote their whole time and energies to the public services - if it means those officers who have opposed themselves to the theoretical and visionary schemes of Captain Maconochie respecting convict discipline - then do we assert that the Arthur, or rather the Franklin faction, are supported, and will be so, by the mass settlers of this colony - who know too well the jeopardy their lives and fortunes would be placed in such schemes to obtain - to hesitate for one moment in giving their most strenuous support to the friends of good order’.<sup>689</sup>

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<sup>685</sup> Fitzpatrick, *Franklin*, p. 164.

<sup>686</sup> *Colonial Times*, 28 September 1838. See also Fitzpatrick, *Franklin*, p. 164.

<sup>687</sup> *True Colonist*, 17 November 1837.

<sup>688</sup> *Ibid.*, 28 Sep 1838.

<sup>689</sup> *Hobart Town Courier*, 5 October 1838.



For the “faction” at least, Maconochie's dismissal was a great triumph. Writing afterwards to Franklin about the dismissal, Montagu stated: 'I consider the day of your separation from him the most fortunate of your life.'<sup>690</sup> It incensed Montagu that Maconochie openly consorted with the enemies of the government and had even joined the ex-Attorney General, Alfred Stephen, in putting money into the *Tasmanian* newspaper, which was set up as the avowed enemy of Franklin's government.<sup>691</sup> Montagu 'urged the great danger to the public peace from the propagation of an opinion that the laws were unjust, the masters oppressive, and the government cruel'. He complained that gentlemen 'who possessed such slight practical knowledge should not venture to assail established systems.'<sup>692</sup> In reply, Maconochie compared Forster, the Chief Police Magistrate, to a lamplighter, by 'whom gas is detested', and declared that he 'belonged to the martinet school, and that his estimate of human nature depressed it below its worth.'<sup>693</sup> His wife, Mary, who had supported Maconochie throughout the impending crisis, was no more charitable towards Montagu, likening the Colonial Secretary to 'our deadly enemy - that snake in the grass, sleek, smooth and slippery... here too many have suffered under his baneful influences; like many noxious animals', she continued, 'he has the power of soothing and fanning his victims to sleep, never attacking openly or boldly'.<sup>694</sup>

It was indeed a sweet success for Montagu; only months earlier, the Colonial Office reported in favour of Arthur in the Bryan case, and it was with reserved satisfaction that Montagu and the rest of the party had been 'pleased to inform Robert Bryan' that

'Governor Arthur's interference with regard to Mr R Bryan did not justly expose him to any charge... His conduct had been characterised by an unmixed zeal for the welfare of the colony'.<sup>695</sup>

<sup>690</sup> Montagu to Franklin, 10 December 1839. See Appendix H for a copy of the letter.

<sup>691</sup> Fitzpatrick, *Franklin*, p. 154.

<sup>692</sup> West, *History*, p. 467.

<sup>693</sup> *Ibid.*, p. 464.

<sup>694</sup> Barry, *Maconochie*, p. 60. The 'bold' analogy was also used by, GTWB Boyes, who wrote [in reference to Arthur] 'that A. when he had any measures to effect - never dashed boldly at it like an eagle soaring in the sunbeams, but set to work underground like a mole'. See Chapman, *Boyes Diary*, 27 July 1831, p. 465. See also Chapter 5.

<sup>695</sup> Montagu to Forster, 30 April 1837, RS 8/E19.

The Bryan affair had inflicted a deep wound in Arthur's administration, and after his recall, Arthur explained that Bryan's attacks proved equally offensive to the government as it did to the community. Arthur protested that Bryan had escaped 'from the hands of justice', and that it had given a 'triumph' to the opposition and 'unprincipled faction'.<sup>696</sup> It was generally held by Arthur that Bryan had contributed to his recall, although there was some justice for the Arthur "faction" in the Robert Bryan decision, and one can only imagine Montagu's delight when on a visit to Port Arthur in March 1837 with the Franklins, he passed Robert Bryan overseeing the solitary cells. Lady Franklin wrote:

'Bryan, the cattle stealer was watchman, good looking, rather handsome and gentlemanly - behaves well - cells mostly full, some were open'.<sup>697</sup>

Undoubtedly Montagu saw himself as the natural successor to Arthur, and the Maconochie affair served to consolidate his position as head of the party. As Maconochie sought to clear himself from the charges made by Franklin and Montagu, he convinced himself he had been misunderstood; 'It has been imputed to me', he declared to Glenelg in October 1838

'that I have been unguarded in expressing my opinions here - but on the contrary, scarcely anyone knows them, which I must regret. His Excellency Sir John views my conduct in this particular with extreme displeasure. He considers it to have been disrespectful both to Your Lordship and himself - that it has given my views an advantage over other better, or at least equally entitled, in his opinion, to early consideration - and he has, in consequence, dissolved my official connection with him'.<sup>698</sup>

Maconochie took great credit on himself for having recognised Montagu, Forster and the other heads of the "faction" as his natural enemies while Franklin was still treating them as friends<sup>699</sup>:

<sup>696</sup> Arthur to Glenelg, 12 January 1836, CO 280/66, p. 66.

<sup>697</sup> Lady Franklin's Diary, 24 March 1837, MS 248/156. Bryan was sentenced to 6 years at the settlement.

<sup>698</sup> Maconochie to Glenelg, 4 October 1838, as quoted in Fitzpatrick, *Franklin*, p. 158.

<sup>699</sup> Fitzpatrick, *Franklin*, p. 127.

'For he was completely puzzled, and I saw through the whole almost at a glance - I do not impute blame to him, or assume merit to myself on this account; the respective results were the mere effect of our different states of preparation to look on what was new - he had none of it at all, and I had a great deal. He was completely bewildered while I had all my wits about me. He was received with a degree of enthusiasm consequent partly on the unpopularity of his predecessor, partly on the favourable prestige attached to his own name - and he became really half wild upon it, and upon the gross adulation, the booings, the presentations, the excellencies lavished upon him by the government officers. I was a looker on all the while, neither sharing in the applause nor constitutionally very likely to be imposed on by it - I read it thus at its face value, and tried to expose it equally to him, but that was hopeless. It was like trying to force a piece of barley sugar out of a child's mouth - the immediate subject melted away, and lost its consequence, while contesting about it, and all that remained were the disagreeable impressions on both sides bequeathed by the contest while it lasted'.<sup>700</sup>

Maconochie was not the only one who thought Franklin was unable to see through the faction; the *Launceston Examiner* declared:

'He was not eminent for that political talent which is often allied to restless ambition and unscrupulous cunning. He was easily deceived. A mind not prone to suspicion, and trained in the candid eye of naval life, was ill prepared to disentangle the intrigue of a party long set in power'.<sup>701</sup>

The *Launceston Examiner* could not have been more accurate in describing the party spirit Franklin had to contend with.

Franklin's pride was injured by Maconochie's reports, prompting the governor in a private letter to Montagu to despair that:

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<sup>700</sup> Maconochie to Sir George Back, Undated, as quoted in Fitzpatrick, *Franklin*, p. 127.

<sup>701</sup> *Launceston Examiner*, 27 December 1845.

[The colonists] feel deeply aggrieved by the misrepresentations which have been made at home respecting them... Capt Cheyne and Captain Maconochie continue to be very unpopular with all the community and I am quite sure that if I had a situation to offer Capt. Maconochie that the placing him in the office would be at this time considered compromising my own character for consistency and efficiency.<sup>702</sup>

Lady Franklin commented that Maconochie was regarded by some colonists as a strong opponent of the Arthur "faction", and following his dismissal, wrote that a few 'discontented spirits of the country see no other way of destroying Montagu and Forster, whom they hate'. Indeed, Lady Franklin hinted that while Maconochie's object had been to secure his own advancement, it served as a means of destroying the "faction".<sup>703</sup> There is no evidence that Maconochie set out to embarrass Franklin; after all they were friends, and Franklin himself had chosen Maconochie to accompany his party half way around the world - which in itself speaks volume of their friendship. But Maconochie was not as constrained by duty as Franklin, and when he attacked the convict system in Van Diemen's Land, he made no distinction between its chief officials and their new administrator. Ultimately Franklin was seen as a victim of Maconochie's machinations, but there is no evidence to suggest that he was the object of Maconochie's attack, other than a common criticism that he was under the sway of Montagu and Forster. In any event, Maconochie was to be vindicated, and the philosophy behind his system was in many ways similar to that which ultimately replaced the assignment system two years later.

Franklin's colonial headache was further exacerbated by the appointment of a Select Committee on Transportation in April 1838<sup>704</sup>, chaired by William Molesworth. A radical Minister of Parliament at the time, Molesworth had 'roused opposition to the prevailing system'<sup>705</sup> of transportation and punishment as early as 1833 when he claimed that he would promote 'every species of just and salutary reform in the Church and State'

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<sup>702</sup> Franklin to Montagu, 15 April 1839, Montagu Manuscript, p. 119.

<sup>703</sup> Lady Franklin to Mrs Simpkinson, 13 February 1839, MS 248/174/1-23

<sup>704</sup> 8 April 1837

<sup>705</sup> West, *History*, p. 475

and wanted to abolish slavery.<sup>706</sup> Four years later, the House of Commons accepted his proposal for an inquiry into the state of transportation, and appointed a select committee comprising 15 members 'to inquire into the system of transportation, its efficiency as a punishment, its influence on the moral state of society in the penal colonies, and how far it is susceptible to improvement'. Lord John Russell, Secretary of State at the Home Office, was among those who examined witnesses at 18 separate hearings between 14 April and 30 June, and during a further 11 hearings between 5 February and 2 April of the following year. The Committee also met in private on a number of occasions to discuss the nature and scope of the report.<sup>707</sup> Molesworth focussed much of his attention on the assignment system, and 'painstakingly drew from his witnesses an image of New South Wales as a place in which drunkenness, prostitution, licentiousness and dissipation thrived', and when submitted to Parliament in August 1838, he argued that the

'general conduct of assigned convicts, your committee would observe, and the misconduct and licentious of convict mechanics, and of convict servants in the towns, was complained of by every witness connected with either penal colony'.<sup>708</sup>

Molesworth urged the home government to abolish transportation altogether, and argued that convict assignment was vicious, indiscriminate and inhumane, and that the 'colonist's demand for labour could be met through immigration'.<sup>709</sup> In the event that transportation was retained however by the home government as a punishment, he suggested that all of the adult male convicts could be employed on the public works as a substitute for the assignment system.<sup>710</sup> According to John Ritchie in his analysis of the Committee's findings, the young radical's mind 'was fixed long before the witnesses had completed testifying to his Committee'. Most witnesses were 'hand picked' by Molesworth, including James Macarthur, James Mudie, John Dunmore Lang and William Ullathorne, and 'misrepresentation abounded'. Mudie for example had arrived in Sydney in 1822, and

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<sup>706</sup> Ritchie, 'Unclean Thing', p. 146.

<sup>707</sup> *Ibid.*, p. 148.

<sup>708</sup> *Ibid.*, p. vii.

<sup>709</sup> Ritchie, 'Unclean Thing', p. 151.

<sup>710</sup> Report from the Select Committee on Transportation, as reported in the British Parliamentary Papers (Transportation), vol 3, Sessions 1837 - 1861, p. xxxvii.

acquired a large and prosperous grant of land near Castle Forbes.<sup>711</sup> Wealthy and outspoken, he soon came into open conflict with Governor Bourke and was accused of mistreating his convict servants, though a special committee later exonerated him from most of the blame. As a consequence, Mudie was relentless in his criticism of the governor, and claimed that Bourke's leniency towards the convicts had been responsible for a great increase in crime in the colony. In 1836, Mudie was removed from the Commission of the Peace by Bourke's successor, Governor Gipps, and he returned to England seeking redress, and revenge. In London, he published a pamphlet titled *The Felonry of New South Wales*, a wholesale attack on all his detractors in the colony. It was at this time that Mudie was called to give evidence before the Committee, and as expected, he denounced the system that had at one time made him a wealthy and powerful man. Such was the character and motive of many of the men called before Molesworth Committee. Conversely, not a single Tasmanian settler was called to give evidence to the Committee<sup>712</sup>, though Molesworth did make use of Maconochie's damning report and letter, and published part of his observations in his 1838 report:

'The practice of assigning convicts to masters is cruel, uncertain, prodigal, ineffectual either for reform or example; can only be maintained in some degree of vigour by extreme severity... The severe coercive discipline, which is its principle element, is carried so far as to be at issue with every natural, and in many cases even very laudable, impulses of the human mind. It defeats, in consequence, its own most important objects; instead of reforming, it degrades humanity, vitiates all under its influence, multiplies petty business... retards improvement, and is, in many instances, even the direct occasion of vice and crime'.<sup>713</sup>

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<sup>711</sup> ADB, vol 2, p. 264.

<sup>712</sup> Ritchie, 'Unclean Thing', pp. 149-50.

<sup>713</sup> Report from the Select Committee on Transportation, as reported in the British Parliamentary Papers (Transportation), vol 3, Sessions 1837 - 1861, p. viii. Molesworth wrote: 'In a report to the Government on the state of convict discipline in Van Diemen's Land, Captain Maconochie has stated...' Maconochie also recorded that 'the moral effects of transportation on the state of society in Van Diemen's Land are described by two gentlemen (Captain Cheyne, Director General of the Roads, and Captain Maconochie), who seem to have possessed the best means of acquiring accurate information, without having resided so long in that colony as to have their feelings hardened on the subject' (p. xxxii).

A further complication for those colonists who advocated the continuation of transportation was the circumstance of Molesworth being a close friend of Edward Wakefield, whose opposition to transportation is already documented<sup>714</sup>, and who was a frequent visitor during the Committee's proceedings.<sup>715</sup> Later, Wakefield also gave evidence before the Committee, and argued that transportation to Australia 'was inextricably connected, and totally incompatible, with the promotion of free immigration'.<sup>716</sup> Molesworth agreed, and strongly argued that 'colonial prosperity could no longer be satisfactorily based upon transportation'. In its findings, the Committee declared:

'[if] the penal colonies are to continue to depend upon our gaols for their supply of labour, their prosperity has reached its climax, and must decline'.<sup>717</sup>

The report also suggested that

'the only other means of supplying Australia with labour is by free immigration'.<sup>718</sup>

Pre-empting the inevitable colonial protest against the withdrawal of cheap convict labour, the Committee actively promoted free immigration as an alternative to transportation, and even expanded their inquiry to look at the feasibility of increasing the minimum price of Crown land.<sup>719</sup> The theories of Molesworth and Wakefield complemented each other in the Committee's reports, though the reasons for their opposition to transportation were founded on two different principles.

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<sup>714</sup> See chapter 2.

<sup>715</sup> Ritchie, 'Unclean Thing', p. 152.

<sup>716</sup> Burroughs, *Britain*, pp. 190 - 199.

<sup>717</sup> *Ibid.*, p. 192.

<sup>718</sup> Report from the Select Committee on Transportation, as reported in the British Parliamentary Papers (Transportation), vol 3, Sessions 1837 - 1861, p. xxxv.

<sup>719</sup> *Ibid.*, p. 193.

Notably, Arthur was also called to give evidence before the Committee.<sup>720</sup> Still sensitive to criticism after his recall, and conscious of the attention that had been focused on his system of punishment, he suggested that the assignment system might be open to change. Credited with bringing the prison system closest to perfection<sup>721</sup>, he declared:

'that assignment has no doubt, as regards some particular individuals whose cases should have formed an exception to the general rule, been carried too far'.<sup>722</sup>

Arthur was mindful of his future in the colonial service, and at the time of giving evidence before the Committee, he had not secured a new posting. Arthur was accustomed to being in the fore of enlightened opinion, especially after his triumph in the Honduras, when William Wilberforce and others congratulated him on his efforts in advocating the rights of slaves.<sup>723</sup> Previously, he complained that 'ignorant critics' in England were misinformed and were weakening 'transportation's deterrence'.<sup>724</sup> On returning to London however, he was shocked to find his views on transportation were now thought of as being unenlightened by some members of Parliament, and that it was probably in his best interests to display some acceptance of the new ideas of penal correctness. Even Maconochie commented that 'the temper and times have changed and Colonel Arthur alone, was standing still'.<sup>725</sup>

There is no evidence Arthur altered his opinion to please Downing Street, but by the same token it was unlikely that his protests would have been well received in Downing

<sup>720</sup> Arthur reached Plymouth on 11 March 1837. See Shaw, *Sir George Arthur*, p. 177. Arthur was prepared; Lady Franklin later recorded that Montagu was employed by Arthur to 'get official returns and make calculations' before he left the colony; 'Two copies were printed. Col. Arthur has taken home about 20 - 2 copies sent to the statistical society, one to each of public offices in the colony to the clergy etc'. See Lady Franklin's Journal, 24 March 1837, MS 248/156.

<sup>721</sup> *Hobart Town Courier*, 28 December 1838.

<sup>722</sup> *Ibid.*, 29 May 1835.

<sup>723</sup> See Shaw, *Sir George Arthur*, p. 61. Some even suggested that Arthur received the governorship of Van Diemen's Land because of Wilberforce's patronage. Arthur also had reason to celebrate - on 1 June 1837, the House of Commons 'removed any doubt as to his humanity' in the Bradley case. See Shaw, *Sir George Arthur*, p. 178.

<sup>724</sup> Shaw, *Convicts and the Colonies*, p. 246. In 1832, Arthur wrote that 'already it is complained of at home that transportation is no punishment. This remark, I am well assured, is most incorrect'. See Arthur to Hay, 12 December 1832, as reported in the British Parliamentary Papers (Transportation), vol 6, Sessions 1810 - 41, p. 368.

<sup>725</sup> Maconochie to Back, 14 March 1839, as quoted in Shaw, *Convicts and the Colonies*, p. 269.



Street, having consideration to Russell and Glenelg's previous despatches. It was one thing for Molesworth to make his recommendations - it was another for them to be implemented, and despite Molesworth's attacks, Arthur was still highly regarded in the circles that mattered most. He did not have to wait long for confirmation of their support; one month later, Arthur was promoted to Colonel, and was already being considered for colonial service abroad.<sup>726</sup>

Much too was made of a despatch written by Arthur in reply to the report of the 1832 Select Committee on Secondary Punishments, in which he emphasised the severity of assignment, and described how the convicts condition was in no way different from that of a slave.<sup>727</sup> Seized upon by the Committee in 1837 as evidence of a slave experience in the colonies, the word 'slave' had long been used by officials referring to the penal nature of convict labour in New South Wales<sup>728</sup> and Van Diemen's Land as 'succinct from its more potent meaning' during the anti slavery campaigns which had begun late in the late 18<sup>th</sup> century.<sup>729</sup> Only a few years before, it had been perfectly acceptable to describe a

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<sup>726</sup> 1 January 1838. See Shaw, *Sir George Arthur*, p. 179. Arthur also received a Knighthood on 19 July 1837. See Shaw, *Sir George Arthur*, p. 179.

<sup>727</sup> Arthur to Goderich, 8 February 1833, as quoted in ed. K Bell and WP Morrell, *Select Documents on British Colonial Policy 1830 - 1860*, (Clarendon Press, Oxford, 1928), p. 273. See also Hirst, *Convict Society*, p. 18. Arthur's despatch was written in response to a request from the Colonial Office for suggestions on how to ensure 'the necessary punishment of convicts' in Van Diemen's Land and New South Wales after the recommendations of the 1832 Select Committee on Punishment. Arthur claimed that the witnesses before that Committee were inferior, and 'had not obtained the full details'. Arthur explained that New South Wales was very different from Van Diemen's Land; 'the free population were few in number and of an inferior caste; the country was not known, the constabulary imperfect; the military force insufficient; the control of power and the influence of opinion were both wanting; labour was of great value; many public duties of consequence were not even undertaken; and above all, several offices of considerable importance were filled by convicts themselves; in truth, the colonies were not in a fit state for the reception and control of convicts' (p. 274). 'In Van Diemen's Land', he added, 'the districts are smaller, and the population less scattered than in the wide-spreading territory of New South Wales' (p. 275). In an effort to re-enforce the strict code of discipline that operated in Van Diemen's Land however, Arthur wrote: 'the condition of the convict in no respect differs from that of a slave'. No one doubted the harshness of their treatment (see Extracts from 1838 Committee, p. 282) - unfortunately for Arthur, the strong statement undermined his intended defence of the convict system in Van Diemen's Land. It is noteworthy too that Arthur recommended that the convicts should be laboured in gangs in the dock-yards prior to transportation, thereby complimenting their punishment in the colony (p. 278).

<sup>728</sup> For example, Bourke referred to the period prior to ticket of leave as 'slavery'. See Bourke to Stanley, *HRA*, I, XVII, p. 314.

<sup>729</sup> Hirst, *Convict Society*, p. 21.

convict who had been put to work as a slave, but by 1837, Molesworth used it to condemn the practice of assignment in the colonies.<sup>730</sup>

According to West however, the recommendations of the Select Committee 'were carried into effect only so far as suited the convenience of the ministers'.<sup>731</sup> While Molesworth assumed credit for 'impressing the magnitude of the evils occasioned by the assignment of convicts', Russell and Glenelg pre-empted much of the Molesworth Committee's investigations and report before they had even heard the complete evidence of its first witness.<sup>732</sup> Notably, Glenelg transmitted a despatch to Sir George Gipps in June 1838 asking 'that a notice warning the colonists of the intention to discontinue at the earliest practicable period the assignment of convicts to private service, and pointing out the necessity of their looking to emigration as the source from which to obtain the requisite supply of labour' - prior to the final report of the Select Committee of the House of Commons on Transportation being tabled in August.<sup>733</sup>

The problems which had surfaced during the last years of Arthur's administration had not subsided either. When Franklin assumed governorship in 1837, the Van Diemen's Land pastoral economy as a whole was in a state of retrogression.<sup>734</sup> According to historical economist Noel Butlin, a major drain occurred on Van Diemen's Land's pastoral resources, with some of its leading pastoralists and a substantial proportion of their stock moving across Bass Strait to the new colony of Port Phillip and South Australia.<sup>735</sup> Interest in the Port Phillip District began in earnest in January 1835 when several Launceston merchants and others formed the Port Phillip Association, sharing the expense of exploration and settlement in the new territory between them.<sup>736</sup> As stated

<sup>730</sup> *Ibid.*, p. 22. Franklin later stressed to Glenelg that though Arthur and Bourke had referred to 'slavery', they meant it in terms of labour. Franklin to Glenelg, 8 October 1838. See also Robson, *History*, p. 324

<sup>731</sup> West, *History*, p. 475.

<sup>732</sup> Ritchie, 'Unclean Thing', p. 159.

<sup>733</sup> Glenelg to Bourke, 30 June 1838, *HRA*, I, XIX, p. 461.

<sup>734</sup> Butlin, *Forming a Colonial Economy*, p. 193.

<sup>735</sup> Port Phillip was a major attraction for immigrants; in one 18 month period between 1841 and 1842, 7776 immigrants settled at Port Phillip from Britain. The population there increased from 5000 in 1839 to 20,416 in December 1841. See Turner, *History of the Colony of Victoria*, p. 250.

<sup>736</sup> The founding members included John Batman, Joseph Gellibrand, John Hart, WG Sams, John Pascoe Fawcner and George Evans. See AGL Shaw, 'Vandemonian Influences on Port Phillip District 1834 - 1850', *Tasmanian Historical Studies*, vol 2, (1989-90), p. 17.

earlier, Arthur also became interested in Port Phillip after the formation of the Association, and made a bid for administration of the territory on behalf of the Van Diemen's Land government.<sup>737</sup> Arthur was unsuccessful however, and Bourke successfully argued that Port Phillip should come under the jurisdiction of New South Wales.<sup>738</sup> As interest by colonists in the Association increased, nearly 10,000 sheep were shipped across Bass Strait from Van Diemen's Land in the first twelve months of settlement there.<sup>739</sup> By now, Charles Swanston had also become a member of the Association, and along with Arthur, Pedder and Montagu, invested heavily in the new settlement.<sup>740</sup> According to Shaw, 172 ships sailed from Van Diemen's Land to Port Phillip in 1837 alone, and nearly 60,000 sheep were sent to Port Phillip during the same period.<sup>741</sup> For a number of years Van Diemen's Land experienced a major drain of capital to the new settlement, and by 1839, nearly two thirds of Van Diemen's Land's net emigration was to Port Phillip.<sup>742</sup> As the Van Diemen's Land economy became further depressed in the late 1830's, it was extraordinary that Swanston, who represented an enormous amount of investment in Van Diemen's Land, was so intent on encouraging outflow of capital and labour to Port Phillip. Self interest however was a common theme in the penal politics of Van Diemen's Land.

In 1839, Franklin indicated that

'immigration to this colony has almost ceased, and that even those labourers and servants who do arrive, generally proceed to Port Phillip'.<sup>743</sup>

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<sup>737</sup> *Ibid.*, p. 18. See chapter 3.

<sup>738</sup> *Ibid.*, p. 18.

<sup>739</sup> *Ibid.*, p. 19.

<sup>740</sup> Swanston doubled his investment in the Association when Gellibrand was murdered by aborigines at Port Phillip. Pedder sent a whole flock across the Strait, while Arthur and Montagu invested heavily in speculation at Barfold on the Campaspe. There were also others; George Russell for instance invested nearly £8400, approaching \$1,000,000 in today's money. See pp. 21-22.

<sup>741</sup> *Ibid.*, p. 20.

<sup>742</sup> *Ibid.*, p. 30. Between 1835 and 1839, 4000 settlers emigrated to Port Phillip from Van Diemen's Land (p. 30). Between 1840 and 1842, a further 2000 left Van Diemen's Land; in 1843, 7000, and in the next three years, over 8000 (p. 31). After 1845, convicts holding conditional pardons were allowed to leave the island (p. 30).

<sup>743</sup> Franklin to Glenelg, 15 January 1839, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 848.

In 1837, pastoral exports from Van Diemen's Land fell to £48,710 compared with £67,738 in 1835. The decline was rapid; in October 1836, Montagu had assured Arthur that all was well:

'As the export of wool is a subject in which, from its great colonial importance, Your Excellency takes a very lively concern, I will introduce some information respecting it, which will be found interesting, in considering the progress it has already made. From Parliamentary and Custom House papers, to which I have had access, it appears that the quantity of wool imported into England from New South Wales and Van Diemen's Land in 1810 was 167 lbs... From 1827 the returns for the two colonies are separated, and from that time on I will confine my remarks to Van Diemen's Land. In that year the exports were 192,075 lbs;... in 1834, 1,601,280 lbs; and in 1835, 1,942,800 lbs. This statement will show how much greater the yearly increase of wool has been than of the sheep returned, but it is also worthy of notice, that the rise in the price of Van Diemen's Land wool has been equally remarkable'.<sup>744</sup>

In February 1839 however, Montagu painted a much gloomier picture:

'Your Excellency is aware that the staple articles of export and wealth of this colony are wool and oil, and that during the years 1835 and 1836 they had attained very high prices in the English market, but that owing to a sudden depreciation there, arising chiefly from foreign causes, their value and more particularly that of wool, fell, in 1837, to such an extent, as to require nearly all exports of two years to equal the amount of the previous year'.<sup>745</sup>

The onset of depression in the late 1830's was not just a phenomenon confined to Van Diemen's Land. Severe drought in New South Wales contributed to a down turn in wool output there, as did a fall in wholesale prices in England, given as 23 per cent over four

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<sup>744</sup> WG Elliston, *Statistical Returns of Van Diemen's Land 1824 - 1839, Compiled from Records in the Colonial Secretary's Office*, (Collins Street, Hobart, 1839).

<sup>745</sup> *Ibid.*, p. 11.

years to 1843.<sup>746</sup> In turn, British investors were concerned by the news of poor returns in the colonies, which worked against the principles of the home government's emigration policy.<sup>747</sup> The Chartist protesters were also active in Britain at this time, and as unemployment and political unrest increased, so did a general depression in industry and mercantile confidence.<sup>748</sup> In the colonies there were fewer funds in the colonial chest to cover the costs of immigration, and with it, less interest in pastoral expansion by overseas investors.

Montagu and Arthur were only too well aware of the consequences of the depression; writing to his friend William Parramore in September 1839, Arthur indicated that his interest in the 'Port Phillip speculation' had been failure, and he had wished 'Mr Montagu had not entered into' it.<sup>749</sup> He added:

'if I could dispose of my interest in it, I should be very glad'.<sup>750</sup>

The European market was a fickle one; in January 1835, the *Hobart Town Courier* reported that the market there had fallen at least 25 per cent: 'The finest combing wools', it reported, 'are not in such request as last year'.<sup>751</sup>

As expected, the immigration system established during Arthur's governorship was again bitterly attacked in the colony by all parties during Franklin's administration. Like Arthur, most complained about the cost of the new system, and the poor quality of immigrants arriving in the colony.<sup>752</sup> According to historian RB Madgwick, the failure of the immigration system was largely due to the high wages being paid in the Port Phillip district and in South Australia, while in Van Diemen's Land the large number of convicts kept wages low.<sup>753</sup> Franklin complained to Stanley in April 1837 that Van Diemen's Land

<sup>746</sup> Butlin, *Forming a Colonial Economy*, p. 225.

<sup>747</sup> *Ibid.*, p. 225.

<sup>748</sup> A Gayer, *The Growth and Fluctuation of the British Economy*, (Oxford Press, London, 1941), p. 244.

<sup>749</sup> Arthur to Parramore, 27 September 1839, *Canadian Papers*, p. 270.

<sup>750</sup> *Ibid.*, p. 270.

<sup>751</sup> *Hobart Town Courier*, 30 January 1835.

<sup>752</sup> Madgwick, *Immigration*, p. 114.

<sup>753</sup> *Ibid.*, p. 166.

was saturated with convicts, and that the settlers would not employ convicts when so many free immigrants were available.<sup>754</sup> Fearing mass depression, Franklin requested that immigration be altogether suspended as it was except for a few female domestic servants.<sup>755</sup> The Executive Council supported Franklin request, declaring that the circumstances of the colony had not been such as to render general immigration a popular measure.<sup>756</sup> A large proportion of the best land had also been given away<sup>757</sup>, and Franklin complained that the arrival of capitalists, who were always so important to the success of Arthur's assignment system, had long since ceased in consequence of good land being easily obtained on the coast of New South Wales and Port Phillip.<sup>758</sup>

In December 1837, Franklin was alarmed by a lack of land sales in the colony:

'The funds available for immigration in this colony are by no means such as would enable the government to defray the charges which would necessarily be incurred if the government commenced the rapid introduction of free labourers in order to supply the place of convicts in private assignment. The present land fund is, I regret to state, inconsiderable, and there is not any large extent of territory that could at an early period be exposed to sale with the intention of replenishing it. The tide of immigration has recently set in towards the extensive pasture lands on the opposite coast: the result of which is, that prices obtained for lands sold here will be smaller than they otherwise would be, and also that labourers brought out by the proceeds of such sales will in many instances almost immediately reship themselves and proceed to Port Phillip or South Australia. These new settlements will thus be peopled, partly at least, at the expense of Van Diemen's Land'.<sup>759</sup>

Similarly, Lady Franklin observed that

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<sup>754</sup> *Ibid.*, p. 113.

<sup>755</sup> *Ibid.*, p. 167.

<sup>756</sup> Hartwell, *Economic*, 76.

<sup>757</sup> *Ibid.*, p. 31. See also Robson, *History*, p. 208.

<sup>758</sup> *Ibid.*, p. 52.

<sup>759</sup> Franklin to Glenelg, 9 December 1837, Accounts and Papers of the Select Committee on Transportation, Vol XXII, pp. 310 - 313 (Microfilm).

'if transportation is abolished, the colony is utterly ruined, for there is no local revenue with which to procure emigrants'.<sup>760</sup>

In July 1837, the Legislative Council was again exasperated by the British Government imposing the entire cost of the police and gaol establishments on the colony, and moved an amendment to the effect that the colony should pay for only one third of the police and gaol charges.<sup>761</sup> According to Fitzpatrick, Downing Street instructed Franklin that the costs were to be charged against the revenue derived from the sale of land.<sup>762</sup> Arthur had postponed imposing the same charges two years earlier, but this time the 'British Treasury remained obdurate'.<sup>763</sup> According to Arthur, it was vital for the success of assignment, 'that police control remained completely in the hands of the imperial government', and that no 'determined or general spirit of opposition to transportation be aroused; colonial acquiescence', he continued, 'in this was based on self interest and would quickly disappear if there were an apprehension that local taxation was to be spent for British, not colonial purposes'.<sup>764</sup>

The press was vehement in its protest against the expense:

'Does she owe the colony nothing for the maintenance by the settlers of about 10,000 prisoners, a benefit which by their own computation is worth £160,000 a year, and a benefit which has now metered out at the lowest average for a period of at least 20 years... Does the moral world owe us nothing for bringing back to the path of honest industry, such a mass of transgressors?'<sup>765</sup>

Before his recall to London, Arthur admitted defeat, and prior to leaving the colony, charged the police and gaol costs to the Colonial Treasury in 1837.<sup>766</sup> Arthur moved in the Legislative Council that the expense of 'the police establishment, the gaols, and a

<sup>760</sup> Lady Franklin to Mrs Simpkinson, 13 February 1839, MS 248/174/1-23.

<sup>761</sup> Shaw, *Sir George Arthur*, p. 155.

<sup>762</sup> Fitzpatrick, *Sir John Franklin*, p. 214.

<sup>763</sup> *Ibid.*, p. 156.

<sup>764</sup> Shaw, *Sir George Arthur*, p. 155.

<sup>765</sup> *Hobart Town Courier*, 13 May 1836.

<sup>766</sup> Shaw, *Sir George Arthur*, p. 156. See also Korobacz, *Legislative Council*, p. 179.

portion of the colonial marine' was to be transferred to the Colonial Treasury, while the Colonial Commissariat was to be responsible for all charges 'connected with the medical establishment, the penal stations, and vessel's employed in communicating between them'.<sup>767</sup> Well aware of the burden he was imposing on the new governor, Arthur felt compelled to offer one piece of advice:

'This Council is too well aware from experience, how essential a well appointed police is to the security of the inhabitants, not to be insensible of the necessity for every branch of it being maintained from whatever source, in the most complete and effective condition'.<sup>768</sup>

This was however the political legacy bequeathed to Franklin and so he was confronted by the July 1837<sup>769</sup> resolution, which read:

'That it is the unanimous opinion of the Council that the whole of the amount of the charge of the police department ought not to be defrayed out of colonial revenue: and that His Excellency be respectfully requested to submit to the Secretary of State this their opinion, and their hope that such a portion only of the charge for the police of this territory, as may be strictly proportional to the colonial duties required from them, may be defrayed from the revenue of the colony; and that the remaining portion of the expense of the police department, which is incurred for the coercion and discipline of convicts under sentence of British laws, may be borne by the home government'.<sup>770</sup>

Following the resolution, Legislative Councillors Swanston and Anstey moved that

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<sup>767</sup> Legislative Council Minutes of VDL, 5 August 1836, as reproduced in RS 8/B49.

<sup>768</sup> *Ibid.*

<sup>769</sup> 20 July 1837.

<sup>770</sup> Korobacz, Legislative Council, p. 180.



'Only one third of the expense of the police department be defrayed by the colony; it being the opinion of this Council that the remaining two thirds should be provided for by His Majesty's Government.'<sup>771</sup>

The Ayes and Noes at six apiece, Franklin voted against the amendment, defeating it with his casting vote.<sup>772</sup> In his study of the Legislative Council, Korobacz records that Arthur had always taken care to appoint private members as well as official members to sub-committees to avoid friction between the two groups. The promotion to the Legislative Council of the worthy men but non-favourites of Arthur's officials was aggravating but necessary, and by playing down the differences between the official and private members, Arthur prevented the formation of 'two opposed blocs'.<sup>773</sup> 'The lingering traces of discord however were distressing for Franklin', who tried hard to 'promote harmony among the parties', and added to the Council persons who were 'discountenanced by Arthur'.<sup>774</sup> Unfortunately, those members appointed by Franklin saw themselves in the role of representatives of the free colonists and guardians of their rights and privileges.<sup>775</sup> Free from any obligation or subtle pressure to support the government, he continued, they 'welded themselves into virile opposition'.<sup>776</sup>

As expected, the expenditure measure infuriated the non-official members of the Council, and contributed to the deterioration in relations between Franklin and those officers embroiled in disputes with Montagu and Forster.<sup>777</sup> These disputes inevitably weakened Franklin's position and authority<sup>778</sup>, and added further to the influence of the Arthur "faction".<sup>779</sup>

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<sup>771</sup> Legislative Council Minutes of VDL, 20 July 1837, p. 22.

<sup>772</sup> *Ibid.*, p. 22.

<sup>773</sup> Korobacz, *Legislative Council*, p. 122.

<sup>774</sup> West, *History*, pp. 147-8.

<sup>775</sup> Korobacz, *Legislative Council*, p. 127.

<sup>776</sup> *Ibid.*, p. 125.

<sup>777</sup> *Ibid.*, p. 125.

<sup>778</sup> *Ibid.*, p. 125.

<sup>779</sup> West *History*, p. 149. This episode foreshadowed the political crisis of 1846 when six members of the Council walked out of the chambers in protest against the police charges, leaving it without a quorum. See chapter 9 for a narrative of the episode.

In his official returns, Montagu signalled the effect of the legislation for the colony: in reporting

'[Colonial] expenditure for the three years, from which it appears that it has increased from £103,027 in 1835, to £133,681 in 1838. Much of this increase is, however, owing to the expenses of the police, which were in the former year defrayed by the home government being now borne by the colony; and if this item were deducted, amounting to rather more than £26,000, the actual increase would be only £4000, a sum very much less in proportion than the increase in the fixed revenue, or in that of the population'.<sup>780</sup>

However in October 1837, Glenelg had agreed to Franklin's request and immigration was suspended, much to the indignation of the Agent General for Immigration in London, Thomas Elliot<sup>781</sup>, a firm supporter of Wakefield.<sup>782</sup>

The difficulties of accommodating new contingents of convicts into the colony during this period with a depressed state of the economy, and the existence of a growing middle class which had no direct interest in transportation, prompted the "faction" to ponder the old system independently of ex-governor. According to historian John Barry, Maconochie's reports were a 'scathing indictment of the police state which Arthur had created', and gave prominence not only to the failings of the old system, but to the officials who administered it and the settlers who used it to their own advantage.<sup>783</sup> Indeed, in giving evidence before the Molesworth committee in March 1838, Magistrate Peter Murdoch explained that 'he considered that the Governor was so wedded to his friend and nephew, Captain Forster, that any complaint of mine would have been useless'.<sup>784</sup> Murdoch continued that 'the government was considerably in the hands of the relations of Governor Arthur'<sup>785</sup>:

<sup>780</sup> WG Elliston, *Statistical Returns of Van Diemen's Land 1824 - 1839*, p. 12.

<sup>781</sup> Madgwick, *Immigration*, p. 167.

<sup>782</sup> *Ibid.*, p. 169.

<sup>783</sup> Barry, *Maconochie*, p. 46.

<sup>784</sup> Minutes of Evidence taken before the Select Committee on Transportation, 1838, Peter Murdoch, Q. 1421, as reported in the British Parliamentary Papers (Transportation), Vol 3, Sessions 1837 - 1861, p. 116

<sup>785</sup> *Ibid.*, p. 116.

'There was himself and two nephews, who, I think, virtually conducted, for the last year or two, the whole government'.<sup>786</sup>

Murdoch however had a long-standing grievance against Forster, who repeatedly sent back his Magisterial returns requesting more detail.<sup>787</sup> Murdoch even went as far as to declare that Forster 'induced' him to resign as Magistrate at Oatlands.<sup>788</sup>

Old complaints too had been continuing. A public meeting in August 1834 'praying that [His Majesty] would be graciously pleased to extend to this colony the enjoyment of a Legislative Assembly' rested chiefly, according to Arthur, 'on the really prosperous condition of the colony'.<sup>789</sup>

'A large portion of the minute which I read to the members at the opening of the Legislative Council in 1833 is introduced, and the petitioners desire to impress on the Royal mind "that the extent of our exports and imports, the amount of the revenue, and the rapid advance which has taken place in morality and religion, tend to show that the time has now arrived when the people are fit to enjoy the privilege of a Legislative Assembly"'.<sup>790</sup>

'Therefore', concluded Arthur, the 'government is clearly in a position to answer the objections of the public meeting [calling for an end to transportation] of 28 February [1835]'.<sup>791</sup> But this petition was different, observed AGL Shaw. For the first time there appeared a petition against the use of the colony as a penal settlement.<sup>792</sup> In March 1835, the *Hobart Town Courier* recorded 'that the ostensible object of [the meeting] was to remove the supposed degradation under which the colony now lies from its being a receptacle of the convicts from England, undergoing, as it was affirmed, punishment

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<sup>786</sup> *Ibid.*, p. 116.

<sup>787</sup> *Ibid.*, p. 116.

<sup>788</sup> *Ibid.*, p. 116.

<sup>789</sup> Arthur to Spring Rice, 20 April 1835, Appendix to the Report from the Select Committee on Transportation, as reported in the British Parliamentary Papers (Transportation), Sessions 1837 - 1861, vol 3, p. 224.

<sup>790</sup> *Ibid.*, p. 224.

<sup>791</sup> *Ibid.*, p. 225.

<sup>792</sup> Shaw, *Sir George Arthur*, p. 156.

worse than death. There was some difficulty', it continued, 'as to what should be done with the offenders now in the colony - but [they] thought at all events that the system of assignment should wholly cease'.<sup>793</sup>

In a despatch to Spring Rice, the new Secretary of State at the Colonial Office, in April 1835, Arthur explained that the grievances of the colonists were 'obscurely adverted to the convicts in the different grades of penal coercion', though he added that the meeting was almost entirely composed of persons resident in Hobart town and consequently of individuals the least dependent upon convict labour.<sup>794</sup> In contrast, Arthur continued:

'I have the satisfaction to find that a declaration has been most respectably and numerously signed, by settlers in the interior, dissenting from the sentiments of the address voted at that meeting'.<sup>795</sup>

But their protests had more foundation than Arthur cared to acknowledge. Skirting the inevitable admission that all was not well, Arthur encouraged Spring Rice to disavow himself from the sentiments of the meeting<sup>796</sup>:

'I am of the opinion that His Majesty's Government... should abstain from prosecuting any measures calculated to render convict labour less valuable to the settlers'.<sup>797</sup>

The protesters however were not so evasive. One speaker stated that it had been the 'especial object of government during the last two years to make us colonists more than ever the materials for the punishment of offenders'.<sup>798</sup> Thus, he continued, 'the granting of land with all other encouragements to the agricultural emigrant, who formed the most effective of these materials, has wholly ceased, and the consequence is, that the number

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<sup>793</sup> *Hobart Town Courier*, 6 March 1835.

<sup>794</sup> Arthur to Spring Rice, 20 April 1835, Appendix to the Report from the Select Committee on Transportation, as reported in the British Parliamentary Papers (Transportation), Sessions 1837 - 1861, vol 3, p. 225.

<sup>795</sup> *Ibid.*, p. 225.

<sup>796</sup> *Ibid.*, p. 226.

<sup>797</sup> *Ibid.*, p. 226.

<sup>798</sup> *Hobart Town Courier*, 6 March 1835.

of prisoners in the progress of reform by the settler is rapidly diminishing instead of increasing as it ought to do. At the commencement of last year there were 7161 prisoners in the service of the settlers, which number fell down during the year to 6291, being a decrease of no less than 870, or nearly one eighth in only 12 months time.<sup>799</sup>

Although the governor resisted the threatened extra charges, Arthur admitted to Spring Rice the following month that the 'demand for convicts is not so great - neither is the power of selecting the best assignees so extensive as it should have been had the old regulations continued to be still in force'.<sup>800</sup> His returns, when viewed alongside those for 1835, showed that a crisis was looming over the system of assignment in the colony. In 1834, the number of convicts applied for by settlers amounted to 2430; the number of convicts actually assigned during that period was 2116.<sup>801</sup> In 1835, the number of applications rose slightly to 3130, while the number of convicts assigned increased to 2740.<sup>802</sup> Commenting on the statistical return for 1835, Arthur wrote:

'The increase however in the number of convicts not supported by government as compared with the total return exceeds in a trifling extent, that of the former year'.<sup>803</sup>

The trend was not unique to Van Diemen's Land. In 1830, the New South Wales Government received 8452 applications for assigned servants. That number increased slightly in 1833 to 9050 and in 1835, it actually fell by nearly half to 4983. Similarly, in 1830, the number of convicts actually assigned totalled 3827. In 1833, that number increased to 4716, and in 1835, it only increased to 4836.<sup>804</sup>

The decline is quite extraordinary when taken in the context of Arthur's comments before the Molesworth Committee in June 1837. When questioned as to what proportion of convicts are assigned upon their arrival in the colony, Arthur replied:

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<sup>799</sup> *Ibid.*

<sup>800</sup> Arthur to Spring Rice, 14 May 1835, CO 280/56.

<sup>801</sup> *Ibid.*

<sup>802</sup> Arthur to Glenelg, 4 May 1836, CO 280/66.

<sup>803</sup> *Ibid.*

<sup>804</sup> Shaw, *Convicts and the Colonies*, p. 255.

'I should imagine that three fourths are assigned immediately'.<sup>805</sup>

Arthur stated that one fourth were sent to the government, though he admitted that that number had increased since there had been an order from home to send some of them to the road parties.<sup>806</sup>

The opportunity to question Arthur about the falling demand for assignees was not wasted by the Committee:

Q. 4255. 'You say all applications for assigned servants are made to the assignment board, is there a great demand for assigned servants? To which Arthur replied - 'I think in the year 1836 the demand was not so great as it was in 1835, and I infer that from the fact we had two or three gangs working on the roads of men who had undergone their sentence on the roads; they were placed in what was denominated the assignment gangs; and they certainly were not so readily taken off the hands of the government; but then those men had passed through a great deal of punishment, and probably settlers would not have been so very impatient or anxious to obtain their services'.<sup>807</sup>

The protesters were under no illusion as to the developing difficulties of the present system. The atmosphere of protest still lingered after the sensation of the Bryan case and the passions it inflamed regarding trial by jury, and further added to the strength of their objection. The *Hobart Town Courier* concluded its review of the 1835 meeting with the observation

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<sup>805</sup> Minutes of Evidence taken before the Select Committee on Transportation, 1838, Sir George Arthur, Q. 1421, as reported in the British Parliamentary Papers (Transportation), Vol 2, Sessions 1837 - 1861, p. 301

<sup>806</sup> *Ibid.*, p. 301.

<sup>807</sup> *Ibid.*, p. 283.

'that most of the speakers inveighed with much severity on what they were pleased to term our horrid system of prison discipline. With one breath they denounced the condition of assigned service as oppressive and too lenient'.<sup>808</sup>

The protest however extended well beyond the remonstrances of the settlers who attended the meeting. For the first time, 'unofficial members of the Legislative Council stressed the evils that Van Diemen's Land suffered from moral pollution and a system which doomed it never to rise to any rank among the British colonies'.<sup>809</sup> According to West, the protesters foreshadowed a 'faint', albeit universal sentiment to 'which the constant attempts to lessen the profits of prisoner labour gave rise'.<sup>810</sup>

In March 1835, the *Hobart Town Courier* reported that 'public meetings are up in all parts of the colony, expressive of the sentiments of the people on the subject [of transportation]'.<sup>811</sup> Gilbert Robertson complained that by an 'injudicious expenditure, quit rents, and taxes beyond its resources, the prosperity of the colony had been checked, and its commerce had rapidly fallen into decay. Agriculture produce of every kind', he continued, 'had for some years been so depreciated in value, that those engaged in the cultivation of land, comprehending a large portion of the respectable part of the community, had been in general reduced to great extremity'.<sup>812</sup>

Robertson was a vocal opponent of the government however, and only a month prior to airing his opinions, he was imprisoned for libel against Arthur and a Hobart solicitor, WT Rowlands.<sup>813</sup> In February 1832, Robertson's convict labour had been withdrawn and he was dismissed from the police office at Richmond for supplying his assigned servants with alcohol.<sup>814</sup> Like many of Arthur's opponents, Robertson complained that he was disadvantaged by the removal of his servants, and yet, felt justified in criticising the

<sup>808</sup> *Hobart Town Courier*, 5 March 1835.

<sup>809</sup> West, *History*, p. 127.

<sup>810</sup> *Ibid.*, p. 127.

<sup>811</sup> *Hobart Town Courier*, 13 March 1835.

<sup>812</sup> Arthur to Spring Rice, 20 April 1835, Appendix to the Report from the Select Committee on Transportation reported in the British Parliamentary Papers (Transportation), Sessions 1837 - 1861, vol 3, p. 224.

<sup>813</sup> See *ADB*, vol 2, p. 384.

<sup>814</sup> *Ibid.*, p. 384.

system once he was excluded from its benefits. Even after his release from gaol, Robertson continued to publish damning accounts of the 'Arthur regime' in the hope of bringing about an inquiry into the colony's affairs.<sup>815</sup>

By May 1837, the demand for labourers was not 'equal to the susceptibilities existing of a profitable direction of labour', reported the *Hobart Town Courier*, 'and the cause of this is, that there is not sufficient capital in the colony to convert its dormant wealth into real wealth.'<sup>816</sup> This was partly because of the growth of settlement at Port Phillip, which was largely financed by Van Diemen's Land people. A month earlier, Lord John Russell spoke in the House of Commons of a 'prison population [that] threatened to overgrow and master the respectable community [in Van Diemen's Land]'<sup>817</sup>, while speculation into the probable effects of a continual fall in the price of wool in the home market destabilised the labour market.<sup>818</sup> But what system, if any, would attend to the wants of the colony?

The *Hobart Town Courier* commented on the alternatives:

'The intention which was originally contemplated in England of sentencing transported convicts to work in chains for a certain period either in road gangs or at penal settlements is, we rejoice to say, never likely to be adopted except in a limited sense as respects characters of the worst description... For one criminal that is reformed at penal settlements or chain gangs, at least 100 are reclaimed with the settlers.'<sup>819</sup>

As newspaper reports filtered back to the colony detailing the recommendations of the House of Commons respecting transportation, a weary Franklin declared:

'There seems to me to have existed a considerable misapprehension in the minds of the emigration committee as to the real wants of the colony and its means for providing for

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<sup>815</sup> Robertson was editor of the colonial newspaper, the *True Colonist*, until 1844 when he left the colony for Norfolk Island. See p. 385.

<sup>816</sup> *Hobart Town Courier*, 5 May 1837.

<sup>817</sup> *Ibid.*, 18 August, 1837.

<sup>818</sup> *Ibid.*, 13 October 1837.

<sup>819</sup> *Ibid.*, 29 May 1835.



free emigrants... This colony has been considered in its general character, to resemble New South Wales, than which there cannot be a greater mistake. New South Wales has a greater outlet for a new population; this colony has scarcely any now remaining. New South Wales is rich; this colony can scarcely meet its current expenditure. New South Wales has a number of interior townships, all rapidly increasing and requiring, especially mechanical labour; this colony has scarcely any, excepting two capitals, Hobart Town and Launceston... The convict system seems to have been carried out with greater rigour here, as far as I can learn, than it has been in New South Wales'.<sup>820</sup>

Like Glenelg<sup>821</sup>, the government of Van Diemen's Land was uncertain if the system could sustain an increase in the number of convicts arriving in the colony, although it certainly had an ongoing and critical demand for the labour that was already in the colony. Reluctantly, Montagu and Forster acknowledged that the perpetuation of the old system was no longer practicable (nor popular) and that transportation had been rendered nearly as effective as it could be expected in Van Diemen's Land under the present system of early assignment to private service.

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<sup>820</sup> Franklin to Glenelg, 12 April 1837, CO 280/78.

<sup>821</sup> Stephen to Phillipps, 29 April 1837, Accounts and Papers of the Select Committee on Transportation, Vol XXII, pp. 310 - 313 (Microfilm).

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## 'The Proudest Day of My Existence'

Franklin's lengthy October 1837 report was received favourably by the Colonial Office, although unfortunately for Franklin this offered no security against the abolition of assignment.<sup>822</sup> In June 1838<sup>823</sup>, Glenelg informed Franklin that the 'early abandonment of assignment' was likely, and then in a second despatch dated 6 July 1838<sup>824</sup>, Glenelg approved of most of Franklin's proposals and recommended that newly arrived convicts should be coerced in gangs under the 'control of the local government' for a period of time prior to their assignment to free settlers, and that assignment for domestic service be discontinued. To make matters worse, the settlers were required to pay for the services of the convicts in private assignment, and there was also a provision for the convicts in assignment to wear a distinguishing badge, and a recommendation for the modification of the present system of tickets of leave.<sup>825</sup> The governor was advised to give effect to these instructions 'immediately'. Glenelg transmitted the same despatch to Governor Gipps in New South Wales, directing him to 'give effect to the recommendations of [Franklin], which you will perceive have been adopted by Her Majesty's Government'.<sup>826</sup> Anxious to secure the gradual abolition of domestic assignment however, Franklin and Gipps both interpreted the instruction 'immediately' as something other than straight away, and Franklin advised Glenelg that domestic assignment would cease from the following July, while in New South Wales, it did not actually end until July 1841.

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<sup>822</sup>*Hobart Town Courier*, 18 January 1839. Franklin's October 1837 report was forwarded to Gipps by Glenelg on 6 July 1838 for perusal (Secondary Punishment, New South Wales and Van Diemen's Land, as reported in the British Parliamentary Papers (Transportation), Vol 6, Sessions 1810 - 41, p. 769).

<sup>823</sup> Glenelg to Franklin, 30 June 1838, as quoted in Shaw, *Convicts and the Colonies*, p. 272.

<sup>824</sup> Glenelg to Franklin, 6 July 1838, Secondary Punishment, New South Wales and Van Diemen's Land, as reported in the British Parliamentary Papers (Transportation), Sessions 1810 - 41, Vol 6, p. 769. Glenelg noted that he had transmitted a copy to Russell at the Home Office.

<sup>825</sup> *Ibid.*

<sup>826</sup> Glenelg informed Franklin that he had addressed a similar instruction to the governor of New South Wales (Glenelg to Franklin, 7 July 1838, *HRA*, I, XIX, p. 469). Gipps replied on 29 March 1839, having received Glenelg's instructions on 18 December 1838 (Gipps to Glenelg, 29 March 1839, Secondary Punishment, New South Wales and Van Diemen's Land, as reported in the British Parliamentary Papers (Transportation), Vol 6, Sessions 1810 - 41, p. 770).

Franklin's October 1837 report poses a further historical question: how much of its content can be ascribed to the new governor? Only months beforehand, Franklin told Arthur that he felt

'an arduous task before me and that I shall require the constant assistance of all around me and I am truly happy to find Mr Montagu quite ready to afford me his best assistance'.<sup>827</sup>

Similarly, in his maiden speech to the Legislative Council in July 1837, Franklin spoke of his 'defective local experience', and said not one word on the subject of the convict establishment.<sup>828</sup> Lady Franklin took an active interest in the system herself, and indicated that most of Franklin's officials were also eager to offer an opinion:

'I have been much harassed with reading and commenting and suggesting on a subject which has been occupying the cabinet's attention for some time past, namely the reformation of penal discipline in these colonies as connected with transportation. Captain Maconochie has written some elaborate essays upon it, wishing to overturn the present system, and introduce something of his own much better. The Executive Council, the Archdeacon, the Chief Superintendent of Convicts, and others, write against Maconochie, and all goes home to the Secretary of State'.<sup>829</sup>

Between May and August 1837, Forster wrote several memorandums and minutes on convict discipline that differed markedly from the old system, and were analogous with Franklin's October report.<sup>830</sup> Forster was highly critical of Maconochie's reports, and questioned his credentials to offer an opinion on the state of convict discipline in the colony:

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<sup>827</sup> Franklin to Arthur, 30 January 1837, as quoted in Fitzpatrick, *Franklin*, p. 124.

<sup>828</sup> Legislative Council Minutes of VDL, 10 July 1837.

<sup>829</sup> Lady Franklin to Mrs Simpkinson, 7 October 1837, MS 248/174/1-23.

<sup>830</sup> The minutes and memorandum's formed part of Franklin's October 1837 packet.

'I came without preconceived opinions, which cannot be said of my opponent; who, having been here eight months, has scarcely had time (shut up as he has been for one - fourth of them in this town) of ascertaining himself, the truth of what he has written. He has depended on other exclusive, and not very accurate, sources of information, and I may add, has never yet, in my belief, thoroughly examined the state of one road party, chain gang, or penal settlement'.<sup>831</sup>

He was of course referring to Maconochie's hurried report:

'It is almost impossible to enumerate the many objections and obstacles which present themselves to Captain Maconochie's plan to the mind of a practical observer of the workings of transportation and prison discipline; Captain Maconochie's plan is founded upon an estimate of human nature, which does not exist in any country, much less in a penal colony'.<sup>832</sup>

In a minute to the Executive Council in August 1837, Montagu concurred with his brother-in-law, prefacing his remarks with the observation that he had 'been for upwards of thirteen years an anxious observer of the purposes and gradual development of the present system of penal discipline'.<sup>833</sup> The confidential official situation', he concluded, 'I have held under this government during that period, have, assisted by my own personal observations, given me the best possible opportunity of doing so'<sup>834</sup>;

'I most fully accord with Mr Gregory [and Mr Forster] in the points of strong and decided objection, which [they] had taken to the schemes and speculation of Captain

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<sup>831</sup> Minute (No. 11), M Forster, 28 August 1837. Undated. Included in Franklin to Glenelg, 7 October 1837, Report on the State of Prison Discipline in Van Diemen's Land, as reported in the British Parliamentary Papers (Transportation), Vol 6, Sessions 1810 - 41, p. 533. Franklin's 1837 report is also to be found in CO 280/119.

<sup>832</sup> Memorandum (No. 6), M Forster, 16 June 1837, included in Franklin to Glenelg, 7 October 1837, Report on the State of Prison Discipline in Van Diemen's Land, as reported in the British Parliamentary Papers (Transportation), Vol 6, Sessions 1810 - 41, p. 508.

<sup>833</sup> Minute (No. 12), J Montagu, 28 August 1837, included in Franklin to Glenelg, 7 October 1837, Report on the State of Prison Discipline in Van Diemen's Land, as reported in the British Parliamentary Papers (Transportation), Vol 6, Sessions 1810 - 41, p. 534.

<sup>834</sup> *Ibid.*, p. 534.

Maconochie, who had evidently written not merely without being aware of the principles upon which the present system is conducted, but even in ignorance of those most pertinent facts connected with it... Captain Maconochie has evidently been misled by those partial representations to which he has exposed himself, or by the influence upon his mind of preconceived opinions unsupported by evidence.<sup>1835</sup>

Forster meanwhile conceded that the old assignment system was incompatible with the changing needs of the colony:

'In the early days of the colony of Van Diemen's Land, it appears to have been the object of the mother country to carry on transportation at the least possible expense... Under such a baneful system of economy, it could not be expected that convicts were subjected to proper discipline. In process of time, however, it was found that the advantage of convict labour was altogether on the side of the settler, and from that period, the regulations under which convicts were assigned have progressively become stricter, but it is especially of late years that these regulations have become more coercive, and transportation has been rendered nearly as effective as it can be expected to be under the present system of early assignment to private service.'<sup>1836</sup>

Ironically his observations echoed Maconochie's in this respect, who declared;

[The Convict System] 'can only be maintained in some degree of vigour by extreme severity. The severe coercive discipline, which is its principle element, is carried so far as to be at issue with every natural, and in many cases, even laudable impulses of the human mind'.<sup>1837</sup>

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<sup>1835</sup> *Ibid.*, p. 534.

<sup>1836</sup> Memorandum (No. 4), M Forster, May 1837, included in Franklin to Glenelg, 7 October 1837, Report on the State of Prison Discipline in Van Diemen's Land, as reported in the British Parliamentary Papers (Transportation), Vol 6, Sessions 1810 - 41, p. 495.

<sup>1837</sup> Summary of Papers on Convict Discipline Sent Home by Captain Maconochie, RN, contained in Franklin to Glenelg, 7 October 1837, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p 420.

Indeed, the recommendations from Maconochie's first report are certainly evident in Glenelg's instructions, and give further weight to Maconochie's reputation as a genuine penal philosopher. Molesworth thought so, and in time, Maconochie was given the opportunity to test his proposal on Norfolk Island, which represented a massive promotion from private secretary to penal colony superintendent. Like Forster, Montagu agreed that he had seen 'order and precision of purpose gradually flowing out of confusion and uncertainty, and security to the person and property as a consequence taking the place of apprehension'<sup>838</sup>, but acknowledged that the introduction of 'new improvements, even though intrusive, in the mere application of the principles which constitute the present system, could be admitted with a minimum of shock or interruption'.<sup>839</sup> Montagu added that he had been privy to those plans of improvement which were successively brought forward as fitting opportunity presented themselves, and that he had the 'satisfaction of seeing the very results follow from them what were originally contemplated'.<sup>840</sup> Predictably, he was silent on the 'baneful system of economy' that Forster had spoken of; after all, Montagu knew it was politically imprudent to criticise the Lords of the Treasury, no matter how justified it might have appeared.

Forster questioned the severity and equality of assignment as a punishment. 'Whilst the assignment system continues', he declared, '[I do] not think that transportation will ever be so formidable as it might otherwise be made'.<sup>841</sup>

Having set down their qualifications to speak on the subject of convict discipline, Montagu and Forster recommended substantial changes for the future.<sup>842</sup> Forster declared:

'After having for many years considered transportation in all its bearings, and having during this period seen prison discipline progressively improved upon, I am induced to believe that the following system would prove more efficient, equally as regards the punishment of the convict and his reformation:

<sup>838</sup> Minute (No. 12), J Montagu, 28 August 1837, p. 534.

<sup>839</sup> *Ibid.*, p. 535.

<sup>840</sup> *Ibid.*, p. 534.

<sup>841</sup> Memorandum (No. 4), M Forster, May 1837 [no date], p. 495.

<sup>842</sup> *Ibid.*, p. 497.

1<sup>st</sup>. The placing of convicts upon their arrival immediately upon the roads or other public works, as already mentioned.

2d. Assigning them to private service if well conducted, after the expiration of their probationary periods on the roads, and allowing them to receive stated wages or gratuities from their masters, the rates to be determined by the government, and to be suspended or forfeited upon conviction before two magistrates. By this means an intermediate probation would be established between the coming off the roads, and a second class ticket of leave, and the well behaved convict alone would retain the indulgence.

3d. Grading a second class ticket of leave, similar in terms to those now granted. This class of convicts should be servants only, and not allowed to set up business on their own or any others persons account.

4<sup>th</sup>. A first class ticket of leave, which should amount very nearly to a pardon. These tickets should not be forfeited unless by decision of magistrates sitting in quarter sessions and for specific offences only. The holder of this ticket should only be required to muster annually; he should be allowed to select his own place of residence, and change it at his convenience, to carry on business on his own account or on account of others, and should be in fact free during good behaviour.

5<sup>th</sup>. Conditional pardon

6<sup>th</sup>. Free pardon.<sup>1843</sup>

Forster acknowledged that if this system were adopted, it would entail at first a very considerable expense upon the home government, in the rationing, lodging and clothing of the convicts, and in the payment of visiting magistrates, proper superintendents, and overseers to preserve discipline. 'But on the other hand', he continued, 'it is more than

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<sup>843</sup> *Ibid.*, p. 497.

probable that this expense would be balanced by the severity of such a system becoming known in the mother country and preventing crime'.<sup>844</sup>

Forster also suggested that the government had lost direct control over its convicts, and that in practice, the masters of assigned servants too frequently, to achieve the most work possible, 'granted indulgences to their convict servants, in the shape of wages, gratuities in money etc'.<sup>845</sup> Once again, his comments reflected Maconochie's observations on the unwillingness of settlers to uphold the regulations:

'Degraded servants make suspicious masters...[who] soon learn... among other symptoms, impatience and irritability under government regulations and judicial decisions, however just or well grounded'.<sup>846</sup>

In a guarded warning for the new governor, Forster thought fit to remind the Executive Council that Van Diemen's Land was a penal colony 'and should be kept as such only', adding that 'Lt. Gov. Arthur's principal difficulties arose from the convict question, but he nevertheless did his duty to the Crown, and to the King's Ministers as respected the discipline of convicts, straight forward, without seeking colonial popularity'.<sup>847</sup>

It is noteworthy that twelve months later, Richard Bourke, whose interest in the abolition of assignment is already documented<sup>848</sup>, wrote:

'The severity of a sentence of transportation would be much increased by requiring one, two or three years at the commencement to be passed in labour in iron gangs on the public works'.<sup>849</sup>

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<sup>844</sup> *Ibid.*, p. 495.

<sup>845</sup> *Ibid.*, p. 495.

<sup>846</sup> Part of Maconochie's report is quoted in Barry, *Maconochie*, p. 47.

<sup>847</sup> Memorandum (No. 6), M Forster, 16 June 1837, p. 510.

<sup>848</sup> See pp 77-78.

<sup>849</sup> Memorandum, Sir Richard Bourke, 26 December 1838, *Papers Relating to Transportation and Assignment of Convicts*, reported in the *British Parliamentary Minutes (Transportation)*, vol 6, Sessions 1810 - 1841, p. 748.



Like Forster, and later Bourke, Montagu also anticipated the continuation of assignment if tempered by the adoption of chain gangs<sup>850</sup>:

'Essential as I consider the assignment of convicts to be the proper working of the system of transportation, I have long been impressed with the opinion that the practice of government regarding it is susceptible of material improvement - it's indiscriminate, and as I think, premature application to the case of almost every convict, has not been unattended with injury... The evils to which I have now been respectfully drawing Your Excellency's attention will I think be most easily counteracted by adopting the suggestion contained in the advice of the Chief Police Magistrate'.

Indeed, his comments about the gangs were analogous with those he had made to Hay while in London in 1830.<sup>851</sup> Montagu embraced Forster's proposal for a graduated system of tickets of leave, declaring that he was 'perfectly convinced, that the smaller the instalments are by which each convict recovers the full amount of his freedom, the less likely will he be, by any act of criminal extravagance, to throw it away.'<sup>852</sup> In addition, Montagu was of the belief that an officer, 'to be styled Superintendent General, who was to correspond direct with His Majesty's Government on subjects connected with convict discipline, might be appointed a seat in both Councils, though act under the direction of the Lieutenant Governor. In such a manner, the humane treatment of the convict would be assured'.<sup>853</sup>

Montagu's minute was reminiscent of Arthur's *Observations upon Secondary Punishment* written in 1833. Arthur wrote with the graces of an impressive penal reformer:

'If we ask, from what class do thieves chiefly spring? We are answered, from among the poor and the ignorant, from those who have been pinched with penury and exposed to

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<sup>850</sup> Minute (No. 12), J Montagu, 28 August 1837, p. 535.

<sup>851</sup> See chapter 3.

<sup>852</sup> Minute (No. 12), J Montagu, 28 August 1837, p. 535.

<sup>853</sup> *Ibid.*, p. 536.

temptation, who have been the victims of an unwilling and unavoidable ignorance of the force of moral obligations<sup>854</sup>... These men are incapable of gaining a livelihood except in their own avocation. Inveterate habit, loss of character, and the excess of efficient regularly trained labourers ready and willing to undertake any work, and who would always be employed in preference, have rendered spoliation the only means by which they can obtain subsistence.<sup>855</sup>

Similarly, Montagu professed that 'men are not necessarily either good or bad. There may be, an intermediate condition of character in which a convict may be actuated by the desire to do what is right, and that desire may be so weak, that unless some measure of restraint, cooperating with it, be laid upon his actions, it may be ready to yield to the first temptation calculated to cause some strong passion in his nature'.<sup>856</sup>

Forster had concluded that no system of penal discipline could be better than that established at Port Arthur<sup>857</sup>, which followed on from Maconochie who had earlier deemed that the system of punishment at Port Arthur, administered by Captain Charles O' Hara Booth<sup>858</sup>, was an admirable model.<sup>859</sup> Montagu however was less categorical: in a tour of the settlement in March 1837, Lady Franklin recorded that Montagu thought convicts going to the settlement were made worse, not better. 'Mr Montagu' she continued, 'thinks no convict reformed, morally or religiously, but may be partially - conducts himself better - thinks for cn. going to Port Arthur makes them worse, but not in external conduct makes them hypocrites there - more missionaries wanted.'<sup>860</sup> Of Booth, Montagu also explained that

'he was not a man of talent, but of high moral worth, good judgement, and indefatigable zeal. Very desirable he shd. be retained if possible'.<sup>861</sup>

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<sup>854</sup> Arthur, *Observations*, p. 23.

<sup>855</sup> *Ibid.*, p. 8.

<sup>856</sup> Minute (No. 12), J Montagu, 28 August 1837, p. 535.

<sup>857</sup> Memorandum (No. 4), M Forster, May 1837, p. 495.

<sup>858</sup> Between 16 March 1833 and 30 March 1844.

<sup>859</sup> West, *History*, p. 466.

<sup>860</sup> Lady Franklin's Journal, 24 March 1837, MS 248/156.

<sup>861</sup> *Ibid.*

John Russell, the first Commandant of Port Arthur<sup>862</sup>, was also critical of the penal settlement when he gave evidence before the Molesworth Committee in February 1838. In reply to a question from Charles Buller as to whether 'Port Arthur is rather a school for eliciting and perfecting immoral propensities and depraved habits than otherwise', Russell simply replied 'yes'.<sup>863</sup>

Arthur obviously thought otherwise, and in reply to Montagu's declaration, Lady Franklin wrote:

'[Port Arthur] proved the success of Col. Arthur's administration by its results, and partly as respects the conduct of convict discipline - it produced a great sensation and extraordinary effect in Col. Arthur's favour, at a time when he had great need of it'.<sup>864</sup>

Like an 'easy going soul who would be wax in their hands'<sup>865</sup>, Franklin warmed to the double act being played out before him. Montagu assured the governor that it had 'never been supposed by anyone that the present system had attained a point beyond which it would not be improved', and that the formation of chain gangs represented a practical improvement to the old system.<sup>866</sup> Forster hastened to add that while such measures would be unpopular with the settlers, the 'decided influence upon the future behaviour of the convicts' would be assured.<sup>867</sup>

The contents then of Franklin's October report strongly reflected the opinions of Montagu and Forster. His recommendations for increased government control over the convicts, the downgrading of assignment and the coercion of convicts in gangs were all features of Forster's May memorandum, and Montagu's September minute to the

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<sup>862</sup> Between 30 September 1830 and July 1831. Russell went on leave in July 1831 and never returned to the settlement.

<sup>863</sup> Minutes of Evidence, Select Committee on Transportation, as reported in the British Parliamentary Minutes (Transportation), Vol 3, Sessions 1837 - 1853, p. 53.

<sup>864</sup> Lady Franklin's Journal, MS 248/156.

<sup>865</sup> Fitzpatrick, *Franklin*, p. 125.

<sup>866</sup> Minute (No. 12), J Montagu, 28 August 1837, p. 535.

<sup>867</sup> Memorandum (No. 4), M Forster, May 1837, p. 495.

Executive Council which appeared to anticipate the changes being contemplated in London. So too were the obvious though unacknowledged thoughts of Maconochie, which pervaded the reports of Montagu and Forster.

Montagu and Forster had clearly made themselves conversant with the sentiments of their political masters in London. Only four months earlier, Russell set down a new system of discipline for the colonies:

'Every adult male convict who shall be transported after a date to be named should be subjected for a certain period to labour on the public works and roads of the colony'.<sup>868</sup>

Russell's comments reflected those of his predecessor, Lord Stanley, who wrote:

'Excepting upon the grounds of economy, I cannot however see any reason why all newly arrived convicts should not, without exception, be sent to labour at the public works... he should then, if the governor should deem him deserving of such mitigation... be further ameliorated by his assignment to settlers'.<sup>869</sup>

It certainly appealed to Stanley, although he was restrained from placing all the men on the public works because of the massive cost it would entail.<sup>870</sup> In giving evidence before the Molesworth Committee, Arthur acknowledged 'that all cannot go smoothly on the first assignment of convicts; 200 felons', he continued, 'after having been for so long persons under close confinement in the gaols or hulks in England, and subsequently pent up on board a transport, are placed in the charge of the masters (or their agents) to whom they have been assigned...'<sup>871</sup> The idea I have often entertained is this, that it would be desirable if particular crimes in England were punished with a particular direction of the convict on his arrival, that he should be directed to that degree of punishment which his

<sup>868</sup> Phillipps to Stephen, 15 April 1837, Accounts and Papers of the Select Committee on Transportation, Vol XXII, pp. 310 - 313 (Microfilm).

<sup>869</sup> Stanley to Arthur, 26 August 1833, as reported in the British Parliamentary Papers (Transportation), Vol 6, Sessions 1810 - 41, p. 300.

<sup>870</sup> Ibid., p. 250.

<sup>871</sup> Minutes of Evidence taken before the Select Committee on Transportation, Q. 4364, Sir George Arthur, as reported in the British Parliamentary Papers (Transportation), Vol 2, Sessions 1837, p. 294.

crime might appear to render necessary; I would say for instance, housebreakers, on their arrival from this country, if it was found necessary to put down that particular offence, then I would say that he should be, on his arrival in the colony, not permitted to be assigned, but sent, according to the nature and degree of his crime, either to work in chains on the roads, or go to a penal settlement.<sup>1872</sup>

Arthur also explained that some convicts were sent to the roads department until 'applications came to take them off the hands of government; - it depends on the demand for them.'<sup>1873</sup> Arthur agreed that he had given a 'great deal of attention' to exposing convicts to severe punishment or hard labour, under the charge of the government, previous to assignment, so long as that part of the sentence was served in Van Diemen's Land'.<sup>1874</sup> Arthur's sentiments were in tune with those of Downing Street; while not advocating its outright abolition, his comments amounted to an admission that the assignment system in its current form had reached its zenith.

There were others who advocated gang punishment prior to assignment, including Major Thomas Mitchell, the New South Wales Surveyor General, who gave evidence before the Committee that if all convicts were placed in chain gangs, and afterwards assigned, transportation would be more dreaded by the convicts - 'the conduct of the prisoners', he continued, 'would be improved by the hope of having their punishment shortened'.<sup>1875</sup>

The actual success of the combined system in the latter half of 1837 is difficult to assess. Submitting his 'blue books'<sup>1876</sup> to Russell in August, Franklin declared:

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<sup>1872</sup> Minutes of Evidence taken before the Select Committee on Transportation, Q. 4399, Sir George Arthur, as reported in the British Parliamentary Papers (Transportation), Vol 2, Sessions 1837, p. 298.

<sup>1873</sup> Minutes of Evidence taken before the Select Committee on Transportation, Q. 4440, Sir George Arthur, as reported in the British Parliamentary Papers (Transportation), Vol 2, Sessions 1837, p. 302.

<sup>1874</sup> *Ibid.*, p. 302.

<sup>1875</sup> Index, Minutes of Evidence taken before the Select Committee on Transportation, Q. 1422-1437, as reported in the British Parliamentary Papers (Transportation), Vol 3, Sessions 1837 - 1861, p. 6.

<sup>1876</sup> The 'Blue Books' referred to a compilation of official statistics of colonial revenue, accounts and statutes prepared by the colonial government for transmission to the Colonial Office. See Fitzpatrick, *Franklin*, p. 90.

'My time has been so incessantly occupied since it was prepared as to prevent my following the course adopted by predecessor of entering upon the very minute details regarding the several returns contained in it'.<sup>877</sup>

The only contemporary accounts tended to be found in the press; as an example, the *Launceston Advertiser* voiced its support for the new proposals:

'We have ever approved... of the probationary gangs - the working men on the roads previously to assignment'<sup>878</sup>

While Franklin neglected to record how many applications were received by the government as opposed to how many convicts were actually assigned to the settlers during this period, the assignment of convict mechanics continued due to the 'superfluidity of convict labour in the colony'. According to historian R.M. Hartwell, it was reasonable to assume that the 'supply of labour was better adjusted to the demands of the colony' after the cessation of immigration, and initially at least, reflected well for the new policy.<sup>879</sup> A decrease in the number of convicts transported to the colony also helped to stabilise the prison population - in 1836, 2222 convicts arrived from Britain<sup>880</sup>; in 1837, the number fell to 1519.<sup>881</sup>

As the wheels of deliberation turned in England, in Van Diemen's Land, Franklin was plagued by internal mischief. The abuses of assignment which he had tried hard to abolish were exhibited in the case of William Clapperton, a convict servant and noted cook assigned to Alfred Stephen<sup>882</sup>, the ex-Attorney General. Stephen had taken on Clapperton after the death of his wife Virginia in January 1837, although as the father of young children, Stephen found it increasingly difficult to fulfil his official duties and

<sup>877</sup> Franklin to Russell, 5 August 1837, CO 280/79, p. 80.

<sup>878</sup> *Hobart Town Courier*, 22 February 1839.

<sup>879</sup> Hartwell, *Economic Development*, p. 76.

<sup>880</sup> Shaw, *Convicts and the Colonies*, p. 367.

<sup>881</sup> *Ibid.*, p. 367.

<sup>882</sup> Arthur himself had not thought much of Stephen after he was reported to have mistakenly reported in 1832 that the governor wished to be relieved of his onerous duties in Van Diemen's Land (see Shaw, *Sir George Arthur*, p. 170). To make matters worse, Stephen was the cousin of his good friend and influential patron at the Colonial Office, Sir James Stephen.

subsequently resigned as Attorney General in September 1837. This was a case which was considerably exacerbated by an unfortunate previous history of personality clashes and antagonisms between the principal protagonists. Stephen had previously quarrelled with Arthur in 1835 over a dispute between his brother George and Arthur's nephew, Henry Arthur, and was displeased when Arthur intervened on Henry's behalf.<sup>883</sup> The gulf between them however had existed for a number of years, and, as early as 1831, the Colonial Auditor, George Boyes, observed that Stephen thought very little of the governor:

'He, S, said it was notorious that Col. A and Mrs A. heard all the tittle tattle of the town - it was supposed through their respective servants - that A. when he had any measures to effect - never dashed boldly at it like an eagle soaring in the sunbeams, but set to work underground like a mole'.<sup>884</sup>

Boyes also recorded that Stephen and Arthur differed over the means of disposing of land grants in the colony, and that Stephen openly objected to Arthur's policy:

'Stephen told me that he had written a letter to Col. Arthur [on the matter] which he thought would separate them forever'.<sup>885</sup>

It is hardly surprising then that the ambitious Stephen was further antagonised when he was overlooked by Arthur for the post of first Puisne Judge<sup>886</sup> of Van Diemen's Land, and consequently fell into disagreement with the new appointee, Algernon Montagu.<sup>887</sup>

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<sup>883</sup> *ADB*, vol 3, p. 181.

<sup>884</sup> Chapman, *Boyes Diary*, 27 July 1831, p. 465.

<sup>885</sup> *Ibid.*, p. 464.

<sup>886</sup> The Puisne Judge was junior to the Chief Justice.

<sup>887</sup> Algernon Montagu was reported to be a 'distant relative' of John Montagu, the Colonial Secretary. Montagu was appointed Attorney General of Van Diemen's Land in 1828, and was highly recommended by William Huskisson, Secretary of State for the Colonies. In 1831, Governor Arthur reported that he was 'perfectly satisfied' with the manner in which Montagu executed his duties, and in January 1833, he was appointed Puisne Judge. Montagu was also a large landowner on Hobart's eastern shore, and invested heavily in cattle and sheep farming. After a colourful career in Van Diemen's Land, where he often bore the brunt of the anti-government press, Montagu returned to London in January 1848. He later held judicial positions in the Falkland Islands, and later, Sierra Leone. See P Howell, 'Of Ships and Sealing Wax: The Montagu's, the Navy and the Law', *Tasmanian Historical Research Association*, vol 13, (1966). Historians

Stephen accused Montagu of 'violent conduct and most improper language', and in protest, was reported to have sat in Montagu's court eating sandwiches and drinking wine.<sup>888</sup> Arthur reprimanded both officials, and in defence of his actions, Stephen argued that he had resolved to 'oppose the advance in power of the Arthur party'.<sup>889</sup> Stephen vowed to leave the colony, though in the interim, joined with settlers Gregson and George Meredith in openly criticising the government. Stephen's popularity among Arthur's opponents increased even more when he refused to sign the address presented to Arthur on his retirement by the public officers. That other protagonist, Gilbert Robertson, wrote:

'Mr Stephen refused to join in the address of public officers to Colonel Arthur, because that address, not confining its reply to an expression of the feelings or opinions of the addresses, asserted a diabolical and notorious falsehood, relating to the well known and often declared sentiments of the colonists in general towards Colonel Arthur and his government; and because Mr Stephen had the honesty to stand almost alone, refusing to certify a falsehood, he incurred the most implacable hatred of a faction whose power was founded on deceit and supported by falsehood'.<sup>890</sup>

Unfortunately for Arthur's successor, Franklin, Stephen directed his hostility towards John Montagu and the rest of the Arthur party, and waited for an opportune moment to strike at the new government.

He did not have to wait long, though surprisingly the opportunity arose out of an episode in his own household. In February 1838, finding that his servant-cook Clapperton, a man in his sixties, had embezzled £85 over a period of 12 months from his household accounts, Stephen reported the theft to the police office, and the servant was subsequently tried by Forster in his capacity as Chairman of the Court of Quarter

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(contemporary and modern) sometimes mistakenly identify Algernon Montagu as John Montagu. See Forsyth, *Convict System*, p. 54, for one example, and Henry Savery, *The Hermit in Van Diemen's Land*, for another.

<sup>888</sup> P Howell, 'Of Ships and Sealing Wax', p. 115. The incident was reported to have occurred on the 7 July 1836. Stephen also arrived late for court, further inciting Montagu.

<sup>889</sup> Robson, *History*, p. 381.

<sup>890</sup> *Colonial Times*, 10 November 1837.



Sessions, and sentenced to 14 years transportation.<sup>891</sup> On hearing of the prisoner's 'culinary' expertise however, Montagu made application to his brother-in-law for the re-assignment of Clapperton to his own service, which was duly agreed too by the Chief Police Magistrate.<sup>892</sup>

As facts of the re-assignment spread across Hobart Town, Stephen demanded Franklin overturn the injustice. The scandal was just what Stephen had been hoping for; he presented a petition of more than fifty signatures to the Sheriff requesting a meeting with the governor to discuss the abuses inherent in the transportation system. Some of the more vocal colonial papers wrote themselves into a frenzy about the case, though Franklin was content to forget about the whole episode after sending Clapperton to the gangs.<sup>893</sup> The *Austral Asiatic Review* wrote:

'His Excellency had directed Clapperton to be sent for 12 months to a road party, afterwards to be assigned but neither in Hobart or Launceston'.<sup>894</sup>

Not unexpectedly, Gilbert Robertson, editor of the *True Colonist*, was not one to let the matter rest, and took particular occasion to savage the Colonial Secretary:

'The climax to the presumption and daring of the faction had at length attained its height. The reins of government were wrestled from the proper hands, and John Montagu has declared himself governor of this colony. The opportunity is now offered for the reunion of His Excellency and the people, by the exercise of firmness and vigour on his part, and support and unanimity upon theirs... This attempt to defeat the ends of justice... is amply conclusive of conduct disqualifying all persons implicated for holding office under the government, and those persons are Captain Forster and Mr Montagu, brothers in law, fellow Councillors, both legislative and Executive, and conspirators in this plot of

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<sup>891</sup> The *True Colonist* first published the affair on 16 February 1838.

<sup>892</sup> Analysis of the affair in Fitzpatrick, *Franklin*, p. 138.

<sup>893</sup> Indeed, Franklin does not even refer to matter in his *Narrative*, which was written with a view to exposing Montagu's alleged misdemeanours in the colony.

<sup>894</sup> *Austral Asiatic Review*, 27 February 1838.

unmerited commutation of the just sentence of a most degraded felon, to the end that the Colonial Secretary might possess a good cook'.<sup>895</sup>

As news of the affair reached New South Wales<sup>896</sup>, Montagu prepared himself for a rebuke from the Colonial Office - or even worse, dismissal.<sup>897</sup> The *Austral Asiatic Review* published what it claimed was Montagu's explanation for taking Clapperton on:

'Of the particulars I was ignorant. I heard he was in the penitentiary for assignment, that he was retained there until it was agreed whether or not he would be required for Government House... Having been informed by the Aide de Camp he would not be required - I applied for and obtained him the usual way'.<sup>898</sup>

The *Sydney Gazette* was equally critical:

'Captain Montagu consequently possesses great influence in Van Diemen's Land Councils of state - the opposition does not hesitate upon occasioning to ascent that he is more of a governor than Franklin himself'.

The *Sydney Gazette* however also described Montagu as 'upright and immaculate', and concluded:

'We know not what to condemn most - the shameless jobbery of the Colonial Secretary, or the truculent timidity of the Governor'.<sup>899</sup>

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<sup>895</sup> *True Colonist*, 23 February 1838. 'Montagu assuming governorship' is a common theme during his career; on 8 October 1839, the *Colonial Times* declared he was governor (see chapter 6), as did the *Eastern Province Herald* while he was at the Cape of Good Hope (see chapter 8).

<sup>896</sup> As reported in the *Sydney Gazette* and later reprinted in the *True Colonist*, 30 March 1838.

<sup>897</sup> Montagu's subsequent attack on Franklin suggests he anticipated that the governor had bombarded the Colonial Office with despatches and documents of the affair, as Arthur would probably have done, but this was not so.

<sup>898</sup> *Austral Asiatic Review*, 27 February 1838.

<sup>899</sup> *Sydney Gazette*, 6 April 1838.

According to historian Kathleen Fitzpatrick, the Colonial Secretary 'took up a role of injured innocence'<sup>900</sup>, and tried to shift the blame back onto Stephen and Franklin. Writing to Arthur, Montagu explained:

'Stephen has poured forth all his anger and strength against Forster and myself and to a certain extent has gained a victory over us by intimating to Sir John Franklin to do an act of injustice to gratify him and his factious follower. I shall enter fully into the particulars of this case as I am anxious you should see Mr James Stephen and Sir George Grey<sup>901</sup> respecting it, that they may know the deplorable state of hardship to which this Govt. is reduced and prepare their minds for whatever may happen here under the existing system.'<sup>902</sup>

Montagu added:

'By Mr Stephen's own account of his conduct towards Clapperton he appears to have kept very little check upon him, to have allowed him almost entirely his own way, not to have taken precautions usual in well regulated families and in fact to have thrown great temptation in his way knowing that the man had been a prisoner... Mr Stephen was a negligent master towards his servant'.<sup>903</sup>

Montagu also wrote to Stephen and was scathing about his conduct in the affair:

'You were a negligent master, and did not use common precaution, but on the contrary put such temptation in the man's way as to leave little, if any doubt that he owes his present unhappy condition to your indiscretion'.<sup>904</sup>

Of Franklin, he was no less damning:

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<sup>900</sup> Fitzpatrick, *Franklin*, p. 143.

<sup>901</sup> Grey was Secretary of State at the Colonial Office between 1835 and 1839.

<sup>902</sup> Montagu to Arthur, Sir George Arthur Papers, 5 March 1838, 1821 - 1855, vol 16, A2176

<sup>903</sup> *Ibid.*

<sup>904</sup> Montagu to Stephen, 5 March 1838, as quoted in Fitzpatrick, *Franklin*, p. 140.

'My fear is... that the convicts will find out the weakness of the Governor and the government and having found by experience that the highest public officers can be rebuked - as we have been... it is impossible to say what length they, the convicts, may carry their object by a combined system of intimidation'.<sup>905</sup>

Montagu prepared a hurried defence of his own and Forster's actions<sup>906</sup>, and sent the papers to his most influential patron - Sir George Arthur:

'I am most anxious you should know all the facts to be able to defend Forster and myself at the Colonial Office'.

And later:

'I do hope you will contrive to get the Clapperton papers into the Colonial Office for me, as I have already requested you to do'.<sup>907</sup>

Party politics was as strong as ever in the colony; it pleased Arthur that Montagu had lost none of his defensive vigour, pledging support for his nephews under siege:

'Mr Forster has persevered in conveying to me all the interesting transactions that have occurred, and I have certainly found time to read them. You may well imagine how

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<sup>905</sup> *Ibid.*

<sup>906</sup> Fitzpatrick, *Franklin*, p. 147.

<sup>907</sup> Montagu to Arthur, 22 February 1837, Sir George Arthur Papers, 1821 - 1855, vol 16, A2176. It was not the first time Montagu had asked Arthur to confer with the Colonial Office on his behalf. In the fall out of Burnett's suspension and his determination to retain his appointment as Colonial Secretary, Montagu informed Arthur that 'Mr Burnett is about to return to England loaded with certificates of good character and all sorts of documents to enable him to demand restoration to his office.... Stephen is of course his chief assistant and adviser... I have ascertained that he has furnished Burnett with a very strong certificate to the effect that when Capt. Swanston and himself visited upon you in July 1834 to stay proceedings in his grant case that you promised if they would leave the matter in your hands to do all your power with the Secretary of State to save him. But that instead of doing so you then reported strongly against him - accused him of falsehoods and that you in fact broke the promise upon which they relied and that in consequence thereof he lost his office... I have read this correspondence and you must insist upon the production of it in Downing Street - it is most important - and it will be held back if it be possible - but if you press it - and press your belief of its contents, he will be compelled to produce it before he can obtain any answer to his application' (Montagu to Arthur, 22 February 1837, Sir George Arthur Papers, 1821 - 1855, vol 16 A2176). Arthur did just that, and submitted the papers to Sir George Grey for perusal (Arthur to Montagu, 21 March 1838, Sir George Arthur Papers, 1821 - 1855, vol 5 A2165).

much I have been gratified to find that the "Arthur Faction" have so successfully stood their ground but the cause of truth will ever prevail, and although we have our faults, yet we endeavour to pursue right principles'.<sup>908</sup>

And later, he added:

'I have lost none of my relish for Hobart Town's sayings and doings'.<sup>909</sup>

Arthur had lost none of his party spirit either, and in a letter to Montagu, a more personal side to his character was exposed:

'The affairs of the colony seem quite as prosperous as ought to be expected, and compared with other "nations of the earth" the people of V.D. Land have just cause for thankfulness - compared with the Canadas they may indeed, exalt [sic]. Gilbert Robertson's incarceration, notwithstanding the unchristian character it displays, I must say I read with pleasure - tis like shutting up a wild beast - only being permitted the use of his pen, he is not so harmless'.

And in a rare display of humour he added:

'I was going to say - it had driven me to my wits end, but that you will think rather a short journey perhaps'.<sup>910</sup>

No wonder - he even paused to reflect on his other sparring partner, William Bryan:

'I trust that very wicked man will be baffled in all his schemes'.<sup>911</sup>

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<sup>908</sup> Arthur to Nairn, 22 September 1839, Toronto, WH Hudspeth Papers, Notes on Sir John Franklin, RS 3/7.

<sup>909</sup> Arthur to Montagu, 30 December 1839, *Canadian Papers*, p. 369.

<sup>910</sup> *Ibid.*, p. 369.

<sup>911</sup> Arthur to Montagu, 4 July 1839, *Canadian Papers*, p. 187.

When news of the Clapperton affair finally reached Arthur, he could not see what all the fuss was about. In a letter to William Henry Hamilton, friend and London representative of the Derwent Bank, Arthur wrote:

'From my letters from V.D. Land, I conclude matters are going on there much in the days of old. With respect to Stephen's cook, it had been better Montagu had not applied for him - but it is, evidently, party feeling that has given rise to so much fuss about the matter. Sir John Franklin appears to want decision; and in order to keep well with the radicals is likely to lose his influence. Such a colony as V.D. Land requires in the Governor a thorough knowledge of mankind - there is no getting on without it; and with it, sound judgement and industry will carry a person through most of the difficulties that present themselves in such a colony.'<sup>912</sup>

Stephen's protests brought back memories for the ex-governor, who hinted that the Attorney General's dispute with Montagu was probably in retaliation for his own quarrels with Stephen years earlier:

'So far as I can judge both Montagu and Forster seemed to have acted with discretion, and Stephen himself, with those fine talents wh. he undoubtedly possesses, has lost himself. I do regret it very much! Nothing wd. persuade him but that I was his enemy at heart; and having taken up that idea he resolved to retaliate and pursued all kinds of windings and turnings. Never did a man labour under a greater error. I was not insensible of the injustice of his conduct towards me; but I can truly say that I never intentionally did him any injury - that I shut my ear to many things said to his prejudice -

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<sup>912</sup> Arthur to Hamilton, 2 January 1839, *Canadian Papers*, p. 2. Conversely, Arthur did not hesitate to ask favours of his nephews, and in a letter to friend James Hyde in October 1838, Arthur wrote: 'I now enclose a letter to Mr Montagu, my nephew, who is the Colonial Secretary of the province, and he will I am sure shew your son, Mr George Hyde, any attention in his power, and be useful to him if he can in any way' (see Arthur to James Hyde, 31 October 1838, *Canadian Papers*, p. 339). And again in 1840, he informed Montagu that: 'A very old and highly valued friend of mine, the Revd. Wm. Armstrong under whose Ministry I sat with great delight twenty years ago will very probably present this letter to you with the view of making inquiry whether there be any good opening in the Australian colonies for his son who wishes to enter the Ministry. Do pray have the kindness to give him all the information in yr. power, and if you can in any way promote his views pray do so and you will confer a favour upon me which I shall feel exceedingly' (see Arthur to Montagu, 10 February 1840, *Canadian Papers*, p. 411).

that is, that I would not allow them to prejudice my mind, and would have done him and still would do him any service in my power'.<sup>913</sup>

Forster agreed with Arthur, and suggested that 'Mr Stephen's motives are not redress for an imagined wrong - but from present rancour arising out of past wrongs'.<sup>914</sup>

Montagu however was no so easily appeased. Following Arthur's lead in the Bryan dispute, he initiated a closing of the ranks in the party, and resolved to defeat the opposition. The *True Colonist*, unceasing in its attack on Montagu, demanded the Colonial Secretary's suspension:

'An alleged evasion of less importance than this caused Mr Burnett the loss of that office which now invests Captain Montagu, his successor, with uncontrolled sway in the issue of facts, that may even consign his present Excellency to the fate of Governor Bligh'.

Montagu's intervention in the reassignment of Clapperton was indeed a serious breach of discipline, and he was fortunate not have been reprimanded by Franklin before the Colonial Office. Instead, embarrassed by the whole episode and anxious for the whole thing to pass, Franklin considered the matter closed once Clapperton was sent to the road party.<sup>915</sup> It was a fatal omission for Franklin's governorship, and demonstrated that Franklin still had good faith in Montagu, and was unaware of the problems beneath the surface.

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<sup>913</sup> *Ibid.*

<sup>914</sup> Fitzpatrick, *Franklin*, p. 140.

<sup>915</sup> *Ibid.*, p. 144. Perhaps Franklin took a page out of Arthur's book in not dismissing Montagu. When the Colonial Treasurer, Jocelyn Thomas, was dismissed from the public service in 1832 for misappropriating public monies, his defalcations caused Arthur a great deal of embarrassment since the Colonial Treasurer was a personal friend as well as a high ranking official and a member of the Legislative Council. Arthur considered criminal proceedings, but decided otherwise: such a move might attract unwelcome publicity to the affair, affix odium to his administration and displease the Colonial Office. Arthur and the Executive Council decided that Thomas should be given a year to sell his property and repay the money owed to the colonial chest. Similarly, Franklin was in the midst of a last effort to save the system of assignment; by dismissing Montagu, it could only support the Colonial Office new arguments for abolition, and endanger assignment altogether (see Korobacz, *Legislative Council*, pp. 71-2 and West, *History*, p. 474).

As expected, and rightly so, the press made a great deal of Montagu's affairs and eagerly exploited the perception that it was he rather than Franklin who governed the colony. In typical style, the *True Colonist* declared:

'Mr Montagu would never have dared so to have insulted Colonel Arthur, for he with all his errors never was found deficient in enforcing that respect which was due to him as Lieutenant Governor'.<sup>916</sup>

Despite an outward appearance of pleasantness in their meetings, Montagu's confidence in Franklin was tarnished and continued to diminish during 1838, culminating in his return to London in February 1839<sup>917</sup>, some six months after the Molesworth Committee had published its recommendations for punishment at home as a replacement for the current system of transportation.<sup>918</sup>

Despite the obvious tension in the colony, there were some lighter moments that occupied the Franklin's attention. In June 1838, Lady Franklin was whisked away from John Giles Price's property at Kangaroo Bay [now Bellerive] in the middle of the night following news that a gang of bushrangers planned to 'attack' the house.<sup>919</sup> Lady Franklin and her entourage had been staying with Price during a tour of the eastern shore, and made a hasty retreat to Hobart aboard a small boat moored nearby. Upon returning to Government House, Sir John Franklin despatched a party of marines aboard the *Eliza* to search for the bushrangers, and placed an 'embargo on [the movement of] all boats until the morning'. A few hours later, the marines landed on the shore near Judge Montagu's Rosny property, one mile distant from Price's property, 'who seeing himself thus beleaguered in the middle of the night, without (as it appears knowing the reason), fell into a rage, and threatened and harangued them from his bedroom window with his nightcap on'!

<sup>916</sup> *True Colonist*, 23 February 1838.

<sup>917</sup> Montagu left Van Diemen's Land on 16 February 1839 (Lady Franklin to Mrs Simpkinson, 3 January 1839, transcribed by G Mackenness, vol 1, p. 54). See also the *Hobart Town Gazette*, 22 February 1839.

<sup>918</sup> See chapter 6 for an examination of Montagu in England.

<sup>919</sup> Lady Franklin to Mrs Simpkinson, 21 June 1838, RS 16/8/1. Price was a magistrate in the colony, and later that year, married Mary Franklin, Sir John Franklin's ward. In 1839 he was promoted muster master of convicts, and later, Superintendent on Norfolk Island.



Lady Franklin also recorded that when Forster heard of the hunt, he was greatly annoyed:

'The fact is, the hue and cry made in Hobart Town that night, did not suit the Chief Police Magistrate's views at all; he would have been glad if the hunted fugitives had got a boat and endeavoured to secret themselves in Hobart town or its environs, which he had expected would be the consequence; he would then be sure to catch them'.<sup>920</sup>

The bushrangers never came, and were later captured in a hut near Richmond by a small party of military officers and constables.

The first volume of the Molesworth reports was tabled in the House of Commons in 1837 followed by the second volume on 3 August 1838, and while the Colonial Office did not immediately send copies of the report to either Franklin or Governor Gipps in New South Wales, English newspapers containing extracts of Maconochie's reports reached Van Diemen's Land in September 1838. In short, the Molesworth reports recommended that transportation to New South Wales, and to the settled districts of Van Diemen's Land, should be discontinued as soon as practicable, and that crimes now punishable by transportation to the colonies should in future be punished by confinement at home or abroad.<sup>921</sup> The Committee also proposed that Maconochie's marks system should be tested in the colony, although it made no recommendations as to where or by whom.

The *Hobart Town Courier* reported the 'opinions of Captain Maconochie on prison discipline are exciting great fear in the colony'.<sup>922</sup> According to John Barry, the reports at once aroused a storm of indignation in the colony; the 'retention of Maconochie as Franklin's Private Secretary', he concluded, 'would readily have been construed as an

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<sup>920</sup> *Ibid.*

<sup>921</sup> Report From the Select Committee on Transportation, 3 August 1838, as reported in the British Parliamentary Minutes (Transportation), Vol 6, Sessions 1810 - 1841, p. xlvi.

<sup>922</sup> *Hobart Town Courier*, 12 October 1838.

endorsement of Maconochie's view'.<sup>923</sup> Later, Franklin explained that Maconochie was a fool to himself:

'I really pity Maconochie, but he surely had been his own enemy. He ought not to have thought of sending such a paper home while serving in my Private Secretary. His warmest friend could not say he was acting justly towards me. It was injudicious as regards himself for I repeatedly told him on the passage out and after our arrival that Lord Glenelg and Sir George Grey and Mr Stephen spoke highly of Sir George Arthur as a Governor and a man'.<sup>924</sup>

As further reports reached the colony that the Select Committee on Transportation had accepted many of Maconochie's recommendations, Franklin initiated a defence of the assignment system.<sup>925</sup> As Maconochie's comments became public, many settlers voiced their protest at being condemned as slave drivers in the British press, and demanded an official response from Franklin, who himself was still waiting on advice from Glenelg.<sup>926</sup> According to Robson, Arthur had long before predicted that 'the danger to the administration of a penal colony would emerge not from the slogans and principles of liberty, but from finance, and had predicted a wave of hostile feeling should the inhabitants of Van Diemen's Land come to believe that the revenue of the colony was to be expended on maintenance and discipline of convicts with a view believed by the settlers to be more to British interests than colonial ones'.<sup>927</sup> While Franklin considered the re-establishment of the old assignment system having previously acceded to the new proposal on the advice of his primary officials, Montagu remained silent on the old system. He had temporarily committed himself to the continuation of assignment in his dual proposal of confinement in gangs prior to private employment, though in time, his attention would turn to the probationary model of punishment. The public emergence of Maconochie's comments represented a distinct divergence in penal policy between

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<sup>923</sup> Barry, *Maconochie*, p. 56.

<sup>924</sup> Franklin to Lady Franklin, 9 May 1839, transcribed by G Mackaness, vol 1, p. 75.

<sup>925</sup> See also chapter 4.

<sup>926</sup> Robson, *History*, p. 328.

<sup>927</sup> *Ibid.*, p. 310.

Franklin and Montagu; while Franklin persevered with assignment, Montagu turned his attention to London - and the gang system.

In Van Diemen's Land, Franklin offered a spirited defence of the moral health of the colony against the imputations of Maconochie and the Committee.<sup>928</sup> Like Arthur, Franklin supported the colonial objections.<sup>929</sup> Franklin had already explained in his October 1837 report that he did not feel justified to recommend the total abolition of assignment and, like Forster and Gregory, proposed in its stead that newly arrived convicts could be 'coerced in gangs for a period of time prior to assignment to free settlers, and that assignment for domestic service be discontinued.'<sup>930</sup> In this manner', he concluded, 'the immediate control of the convicts would be retained by the local government, and the minds of the convicts would be subdued and they would be trained to the practice of labour, and be thereby prepared for submissive and useful conduct in assignment.'<sup>931</sup>

A committee formed at Campbell Town to discuss the responsibilities of the British Government to the colony and to voice their indignation at the manner in which their characters had been debased in the press.<sup>932</sup> The *Hobart Town Courier* applauded the Campbell Town settlers in their objections to Maconochie's reports:

'The thanks of the whole free community of this colony are due to the respectable and spirited individuals in the Campbell Town District, who have so manfully come forward to rescue the moral character of the colonists of Van Diemen's Land from the unjust and erroneous calumnies which has been heaped upon them'.<sup>933</sup>

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<sup>928</sup> *Ibid.*, p. 474. The Legislative Council of New South Wales also rejected the aspersions made about the character of the colonists in that colony by members of the Committee before the final report was even tabled. See Resolutions of the Legislative Council of New South Wales, 17 July 1838, as quoted in Bell and Morrell, *Select Documents on British Colonial Policy 1830 - 1860*, p. 286.

<sup>929</sup> Shaw, *Convicts and the Colonies*, p. 283.

<sup>930</sup> Franklin to Glenelg, 7 October 1837, as reported in the British Parliamentary Papers (Transportation), Vol 6, Sessions 1810 - 41, p. 434. See also Brand, *Probation*, p. 10, and West, *History*, p. 667, note 285 for their commentaries.

<sup>931</sup> Shaw, *Origins of the Probation System*, p. 25.

<sup>932</sup> *Ibid.*, pp. 327-8. Reported in the *Hobart Town Courier*, 28 September 1838.

<sup>933</sup> *Hobart Town Courier*, 5 October 1838.

A 'Memorial from the Northern Division for the continuance of Assignment in Domestic Service' followed in early 1839, and while described as 'short', Franklin added that it embraced every point [of mine], though Forster recommended that 'many parts' be struck out.<sup>934</sup>

In a letter to the petitioners, Franklin wrote:

'I will only add, that sentiments akin to these were expressed by me more than eighteen months ago, after my first visit into the interior, in a letter to the Secretary of State, and subsequently in other despatches. They were testimonies, though perhaps inadequate ones, to the moral respectability of a community, whose interests, both moral and intellectual, had become my own, and whose advancement it was my hearts desire, and bounden duty, to the best of my ability, to cherish'.<sup>935</sup>

While Franklin defended the character of his colonists, some of his own officials questioned the strategic direction pursued by the government. During an excursion to Port Arthur in September 1838, Captain George King, formerly Port officer of Hobart and now a visiting magistrate<sup>936</sup>, confided in Lady Franklin that he feared the present state and prospects of the colony were 'retrograding':

'The superior attractions of the other colonies', he acknowledged, 'to be one considerable cause of this, but there were others in operation - the overwhelming number of tickets of leave was one and its inevitable consequence, the abandonment of the colony by free labourers who could not compete with these in the same terms and went over to the other colonies'.

Lady Franklin also recorded that King 'thought Sir John had committed an error by granting tickets of leave with much more facility than did Colonel Arthur who if a man

<sup>934</sup> Franklin to Lady Franklin, 17 May 1839, as transcribed by G Mackaness, vol 1, p. 84.

<sup>935</sup> Franklin to Wm. Wood, Esq, and the Gentlemen Appointed as the Committee of the Campbell Town Meeting, 18 September 1838, as reported in the British Parliamentary Papers (Transportation), Vol 6, Sessions 1810 - 41, p. 731.

<sup>936</sup> Lady Franklin to Mrs Simpkinson, 27 January 1841, MS 248/174/1-23.

absconded, or received a flogging, always made him begin his period of servitude over again, even from the very commencement.<sup>937</sup>

Maconochie, still a resident in the colony and standing steadfast by his reports, revelled in the articles and snippets filtering back to the colony. Lady Franklin observed that

'Captain M. is in a state of great excitement in consequence of the report of the transportation committee which is continually quoting him and his proposed system with approbation. He has certainly some reason to triumph'.<sup>938</sup>

Maconochie himself declared:

'that cause has now got me complete. I will "go the whole hog" on it. If not successful on it from here, as I explain at greater length in my packet letter, I return home, partly about it, partly about myself'.<sup>939</sup>

Continuing on with his previous metaphor about Forster detesting gas, Maconochie credited himself with being much more enlightened:

'and if I now appear extravagant, do not at once pronounce that I have sniffed gas, but examine the case - read, mark, learn and become excited yourself'.<sup>940</sup>

According to Lady Franklin however, Franklin and Montagu had every reason to be suspicious of Maconochie. In February 1839, Lady Franklin recorded in a letter to her sister that there was reason to suspect Maconochie, not Montagu, might succeed Franklin as governor if he was recalled, 'in order to work out his own system with advantage, a

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<sup>937</sup> Lady Franklin's Journal, September 1838, MS 248/85.

<sup>938</sup> Lady Franklin to Mrs Simpkinson, 3 February 1839, as transcribed by G Mackaness, vol 1, p. 56.

<sup>939</sup> Maconochie to Washington, 29 May 1839, as reproduced in Barry, *Maconochie*, p. 59. Captain Washington was a friend of Maconochies.

<sup>940</sup> *Ibid.*, p. 59.

super succession which in one of his most vain and unguarded moments he did not scruple to tell me he contemplated'.<sup>941</sup>

Her comments are particularly important, and help to explain the deep opposition formed against Maconochie by Montagu and the rest of the party, who themselves were intent on securing power.

While Maconochie occupied his time in comparative isolation writing reports about the aborigines and the convicts, there was a 'resurgence' of support for the assignment system in Van Diemen's Land after a decrease in the number of convict arrivals. Soon after, the governor expressed to the Legislative Assembly his view that assignment was the only practicable form of penal discipline in a new colony:

'Whilst, therefore, assignment is a punishment of considerable severity, it is one in which the state of the convict is the least removed from the natural condition. It is the least artificial of all punishments. It is the one which detracts the least from the ability of the culprit as a member of society, and it is the one which seems to prepare him best for restored freedom. It is also, the only one which can be conducted without great difficulty in a new colony, where the officers necessary to the duties of a more artificial system can be obtained, if at all, only with difficulty, and at great expense.'<sup>942</sup>

His wife and confidant concurred;

'I have not the slightest doubt of government being obliged in a very short time to return it. There is much to be said against the assignment system and much in favour - but this is a subdivision of the great subject whether transportation shall be continued or abolished.'<sup>943</sup>

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<sup>941</sup> Lady Franklin to Mrs Simpkinson, 13 February 1839, MS 248/174/1-23.

<sup>942</sup> Franklin's Minute, Executive Council, 7 October 1837, as reported in the British Parliamentary Papers (Transportation), Vol 6, Sessions 1810 - 41, p. 539. The minute was also reproduced in the *True Colonist*, 21 December 1838.

<sup>943</sup> Lady Franklin to Mrs Simpkinson, 3 January 1839, as transcribed by G Mackaness, vol 1, p. 53.

It was at this time too that the contemporary historian, the Reverend John West, arrived in Van Diemen's Land in 1838. West presided over a parish in Launceston, and began writing for the *Launceston Examiner* a short time later. He began writing his *History of Tasmania* in 1846, and was critical of Franklin's 'delay and indecision', though he welcomed the governor's more liberal political attitude and interest in religious education.<sup>944</sup> West thought that the 'confidence of the public in Franklin's government did 'not run parallel with its esteem for his personal character'. West's prejudices however were clearly on the side of the anti-transportationists, and many of his comments about the convict system and its administrators were not always balanced against its economic benefits. Nevertheless, he paints an excellent picture of early life in Van Diemen's Land, and his contemporary recollections of Franklin and his primary officials are invaluable - and plentiful.

In September, the *Hobart Town Courier* reproduced a petition which had been published in the *Australian* newspaper. The *Courier* described the 'composition' as the best it had seen or read upon the issue of the existing systems of assignment and transportation.<sup>945</sup> Franklin must have warmed to the sentiments of the petition, which advocated the continuation of assignment to the colonies:

'Your Honourable House have been disposed to view the present system of transportation, and more particularly the present system of the assignment of convicts to private service, as incompatible with the two great objects which ought primarily to be effected, viz firstly the punishment of the said convicts in such a manner as would deter others from the commission of crime; and secondly, the moral reformation of the convicts themselves... While the private assignment of convicts as now practiced in this colony possesses all these positive advantages, it is also free from a multitude of evils incident to the system proposed in its stead. The massing together of convicts, as unavoidably happens, where they are retained in the hands of the government and worked in gangs, initiates some into evil practices which they were previously unacquainted, and matures

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<sup>944</sup> AGL Shaw, 'John West's Tasmania', *Tasmanian Historical Studies*, vol 1, (1990), p. 85.

<sup>945</sup> *Hobart Town Courier*, 7 September 1838.

and confirms others in habits and propensities from which they might otherwise be reclaimed.<sup>946</sup>

The petitioners were prepared to admit however that the present system was open to beneficial modifications and additions, chiefly with respect to the police department and the means of affording religious instruction.<sup>947</sup>

Such concerns were not confined to New South Wales and Van Diemen's Land. Writing in England to the Colonial Office in 1839, Joseph Archer<sup>948</sup>, who had his own financial interests in the colony, expressed his anxiety about the proposed changes to the system of convict management in Van Diemen's Land:

'Much excitement prevails just now in Van Diemen's Land respecting the intentions of the home government as to the future assignment of convicts to the settlers. The above feelings are shared by those of us, who happen to be in England, but whose property lies in the colony. We are desirous to know if any definitive plan has been decided upon by the Colonial Office here - and what that plan is.'<sup>949</sup>

Lord Normanby, now Secretary of State at the Colonial Office, remained tight-lipped about the new blueprint:

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<sup>946</sup> *Ibid.*, 7 September 1838. The *Hobart Town Courier* was a staunch supporter of the assignment system under the editorship of Dr James Ross, and it appeared to be continuing its policy under his successor, William Gore Elliston. Elliston went into great debt over the purchase however, reputedly to Arthur. Montagu ensured his compliance during Franklin's administration, and censored him in 1839 when he criticised Henry Arthur. Franklin also added that 'Mr Elliston was unable, in consequence of his pecuniary obligations to the Derwent Bank, to resist the influence of that establishment, even when it was exerted against the Government'. See Franklin, *Narrative*, p. 18.

<sup>947</sup> *Ibid.*, 7 September 1838.

<sup>948</sup> Joseph Archer was born in England in 1795, and emigrated to Van Diemen's Land in 1820. Archer was a wealthy landowner, and built the large mansion *Panshanger* near Longford. Archer returned to England in 1836 after a disagreement with Arthur, though he retained most of his financial interests in the colony. Archer later returned to Van Diemen's Land and became the first elected member for Longford in 1852. His brothers William, Thomas and Edward were all successful landowners in northern Tasmania. See *ADB*, vol 1, p. 24.

<sup>949</sup> Joseph Archer to Normanby, Hyde Park, 12 August 1839, CO 280/115, p. 182.



'It is proposed forthwith to lay ample information on the subject on the table of the Houses of Parliament, which will enable you to make yourself acquainted with all that has taken place on it.'<sup>950</sup>

Similarly, Franklin was hoping for something to dispel his own confusion about what was happening in London.<sup>951</sup> In February 1839, he sent an urgent despatch to Gipps to discover if he knew anything of the intentions of the home government, since he had heard nothing formally himself. Gipps too had heard nothing, and Franklin, further exasperated by newspaper reports circulating in the colony outlining the Molesworth Committee's recommendations<sup>952</sup>, exclaimed that he could scarcely believe the ministry would attempt 'to act on the vague and as I think impracticable suggestions of the Committee'.<sup>953</sup>

He wrote;

'The report of the committee is silent as to what is to be done with the convicts already in these colonies, in the event of transportation being abolished, and it would appear that the home government either contemplate some such measure or the sending out of a very limited number of convicts, since a letter from the Board of Ordnance which has been addressed to the respective officers informs them that only one years supply of clothing has been ordered for New South Wales and Van Diemen's Land. The Board has not even forwarded the convict clothing demanded for 1838 and 1839, and we shall in all probability have to purchase from the shops here such kinds as we can procure... I can scarcely believe the Ministry will attempt to act on so vague and as I think impractical suggestions of the Committee'.<sup>954</sup>

<sup>950</sup> Minute attached to Joseph Archer to Normanby, Hyde Park, 12 August 1839, CO 280/115, p. 182.

<sup>951</sup> Ritchie, 'Unclean Thing', p. 162.

<sup>952</sup> Franklin to Glenelg, 15 February 1839, as reported in the British Parliamentary Minutes (Transportation), Vol 6, Sessions 1810 - 1841, p. 840. Franklin wrote: 'I have had the opportunity within the last few days of reading in the English newspapers a copy of the Report on the Select Committee of the House of Commons on Transportation'.

<sup>953</sup> Franklin to Gipps, 9 February 1839, as quoted in Fitzpatrick, *Franklin*, p. 225.

<sup>954</sup> *Ibid.*, p. 225.

Frustrated by the lack of information emanating from the Colonial Office, Franklin sent an urgent despatch to Glenelg, defending assignment as if the newspaper reports of its total abolition were true. Franklin declared:

'I feel it to be an imperative duty, notwithstanding that I have not received any official communication from Your Lordship on the subject, to follow the precedent which was established by my predecessor under very similar circumstances in 1833, and to put Her Majesty's Government in possession of more full and correct information.'<sup>955</sup>

Lady Franklin was equally disturbed, and commented in a letter to her father that

'I cannot believe the Ministry is yet prepared to adopt anything so vague, impracticable and dangerous'<sup>956</sup>... It is astonishing the ignorance and prejudice which prevail at home on the subject of transportation. The "*Spectator*" on the subject is a tissue of the most false and malignant representations, which it puts forth as the organ of a party to effect the destruction of transportation altogether. Captain Maconochie has given a helping hand to this result'.<sup>957</sup>

Lady Franklin indicated that Franklin was not going to give up without a fight; later, she explained that 'Sir John writes a despatch by this very ship, to arrest if possible, the execution of the Transportation Committee's views, till he can write again more fully'.<sup>958</sup>

Three months later, Lady Franklin was still seething about the recommendations:

'A more garbled, prejudiced and one sided view of a question I never read than the report of the Transportation Committee - abuses and horror, which have long since ceased to exist, and faults of administration which are to be found only in the other colony have been raked up, and false and reckless statements made by Captain

<sup>955</sup> Franklin to Glenelg, 15 February 1839, as reported in the British Parliamentary Papers (Transportation), Sessions 1810 - 1841, vol 7, p. 840.

<sup>956</sup> Lady Franklin to Mrs Simpkinson, 33<sup>rd</sup> February 1839, as transcribed by G Mackaness, vol 1, p. 56.

<sup>957</sup> Lady Franklin to her Father, December 1838, as transcribed by G Mackaness, vol 1, p. 53.

<sup>958</sup> Lady Franklin to Mrs Simpkinson, 3 February 1839, as transcribed by G Mackaness, vol 1, p. 56.

Maconochie as to them, alleged as evidence, while not a single testimony the other way is given - the colony may thank Captain Maconochie in a great measure for this'.<sup>959</sup>

In any case, Franklin was unequivocal in his defence of the assignment system;

'I will even venture to submit to Your Lordship, that the inequality of condition which exists in assignment is less than that which exists in other forms of punishment... With respect to the general conduct of assigned servants, the Committee appear to have formed an unfavourable conclusion, founded chiefly upon a passage which is to be found in a despatch addressed by my predecessor, Sir George Arthur, to Your Lordships department in 1832'.<sup>960</sup>

Paradoxically, he also added:

'The questions which it involves are of such vital importance that I shall resume its consideration at the earliest opportunity. In the meantime, I trust I have already (should my despatch arrive in time) shown cause why Her Majesty's Government should not, in any amelioration of prison discipline which may be adopted in this colony, altogether abandon the principle of assignment'.<sup>961</sup>

Unfortunately for Franklin and the assignment system in Van Diemen's Land, it was indeed too late - the Colonial Office had already formalised the recommendations of the Molesworth Reports in a set of new instructions.<sup>962</sup>

While Franklin persevered with the politically condemned old system<sup>963</sup>, Montagu privately criticised Franklin and Lady Franklin as fatal to the dignity of government, and

<sup>959</sup> Lady Franklin to Mrs Simpkinson, 13 February 1839, MS 248/174/1-23.

<sup>960</sup> Franklin to Glenelg, 15 February 1839, as reported in the British Parliamentary Papers (Transportation), Sessions 1810 - 1841, vol 7, p. 840.

<sup>961</sup> Franklin to Glenelg, 15 February 1839 (No. 2), as reported in the British Parliamentary Papers (Transportation), Sessions 1810 - 1841, vol 7, p. 848.

<sup>962</sup> A similar despatch from Franklin followed on 11 March 1839 (see p. 853). See chapter 6. Franklin did not forward another report on the system for over a year (18 November 1840 - see p. 870).

<sup>963</sup> He also defended the practicality of the assignment system.

ascribed the lenity of Sir John to the influence of Lady Franklin.<sup>964</sup> As early as 1838 Montagu seriously considered returning to London. Writing to Arthur in March, he confided:

'After all I have written of the state of this government, you may suppose how much more anxious I am ever to leave this place... It is painful beyond description to act under a Governor who has no firmness of character, and is the tool of any rogue who will flatter his wife, for she in fact governs.'<sup>965</sup>

Less than 12 months later, Montagu submitted a request for twelve months leave of absence. Lady Franklin was well aware of Montagu's antagonism for her, but was under the mistaken belief that all was well on the eve of his departure:

'They always suspected me however, till Captain Maconochie went, of being too great a friend of his to be one of theirs and it was after that period, that I was most in their favour'.<sup>966</sup>

Similarly, Montagu's contempt for Lady Franklin was carefully concealed from her husband, who having consented to his leave of absence to visit England with his family, commented that Montagu

'expressed... his regret at not having before become intimately acquainted with Lady Franklin, accompanying this observation with other remarks, which proved or appeared to prove that Lady Franklin had won his entire confidence and esteem; and he gave a further proof of this... by requesting for himself that she would favour him with her

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<sup>964</sup> West, *History*, p. 173.

<sup>965</sup> Montagu to Arthur, Undated, Sir George Arthur Papers, 1821 - 1855, vol 16 A2176. There were other cracks showing in the faction's armoury. On the 16<sup>th</sup> September 1839, the Colonial Office was advised that John Arthur, MD, had been suspended from his duties at the medical department. Arthur was a relation to the ex-governor (16 September 1839, CO 280/127, p. 28).

<sup>966</sup> Lady Franklin to Mrs Simpkinson, 10 January 1843, MS 248/174/1-23.

written notes on those subjects on which they had conversed, and which he "felt sure he could make use of in England with great benefit".<sup>967</sup>

Franklin induced Montagu to defer his departure for London, explaining that his request had come at 'a very inconvenient period'.<sup>968</sup> He was hesitant to make changes 'to [Montagu's] department' in his absence, and Montagu, for all his troubles, was thoroughly acquainted with the subjects of immigration and convict discipline.<sup>969</sup> Indeed, it may have even been the reason Franklin chose not to pursue Montagu's dismissal after the Clapperton affair. The urgency of Montagu's application however induced Franklin to grant his leave, and Montagu and his family sailed for England on 16 February 1839 aboard the *Derwent*. In any case, Franklin perceived his absence might benefit the colony:

'The old system of assignment', wrote Franklin, 'being under sentence of condemnation, whilst nothing very definite was yet promulgated as to what should take its place, is disturbing. In granting Mr Montagu's request, I saw that his presence in England might be infinite advantage to the colony if he had legitimate access to the Colonial Office, and had means of making available his knowledge and experience in colonial affairs, and especially on the subject [of the convict system]'.<sup>970</sup>

Besides, Franklin did not really have any choice in the matter if the papers are to be believed. The *Launceston Examiner* declared:

'Mr Montagu sought leave of absence on family reasons of urgency, and intimated that if not allowed he would be compelled to resign'.<sup>971</sup>

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<sup>967</sup> Franklin, *Narrative*, p. 11. According to Franklin, Montagu later used these very letters as evidence of Lady Franklin's interference in the business of government. See Franklin, *Narrative*, pp. 71-3.

<sup>968</sup> Franklin, *Narrative*, p. 10.

<sup>969</sup> *Ibid.*, p. 10.

<sup>970</sup> *Ibid.*, p. 11. Fitzpatrick has developed a similar argument, writing that Montagu's dismissal would have 'paralysed' the government in Van Diemen's Land (Fitzpatrick, *Franklin*, p. 150-1).

<sup>971</sup> *Launceston Examiner*, 29 November 1845. See also Sir Ernest Clark Bequest, Correspondence with AL Wyn about the Franklin - Montagu Dispute, RS 7/112.

Franklin was not the only one who queried the timing of Montagu's departure. Lady Franklin recorded in a letter to her sister that

'Mr Montagu leaves this country with the regret of the great majority of its inhabitants. Those [who like him] least, acknowledge there is no one to fill his place and this sentiment is enhanced because Mr Forster is more disliked than he. Mr M is much gratified by an address having been got [up] principally by some individuals who were once greatly opposed to him to express their regret at his departure, - a large club in Hobart town called the Union to which Mr Stephen has never been able to gain admission, at the last moment request his company to dinner, an honour never yet conferred but upon the Lieut. Govr. They have enhanced the compliment by inviting Mr Forster to accompany him - the 2<sup>nd</sup> gentlemen accept the invitation the very last day and go from the dinner on board. The Montagu's spent a week with us after leaving their house - it cemented our good feelings and they part from me certainly liking me a great deal better than they ever did before and ended thinking quite differently of me - I am now consulted in all the important matters'.<sup>972</sup>

At the dinner to farewell Montagu, attended by '30 to 40 gentlemen', the chairman rose to propose a toast and presented his testimony:

'There is, however, one circumstance which must reconcile us to the absence of Captain Montagu at this moment, and it is this - that his intimate knowledge of this colony, and of those who live here, added to his known ability and character, cannot fail to give him the opportunity of informing those who legislate for us at home, that we are not the class of men that we have been latterly represented'.<sup>973</sup>

In reply, Montagu declared:

'I feel this, Mr Chairman and gentleman, to be the proudest day of my existence'.<sup>974</sup>

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<sup>972</sup> Lady Franklin to Mrs Simpkinson, 13 February 1839, MS 248/174/1-23.

<sup>973</sup> *Hobart Town Courier*, 22 February 1839.

<sup>974</sup> *Ibid*, 22 February 1839.

Prior to leaving the colony, Montagu instructed William Thomas Parramore (also Arthur's trustee) to oversee his business interests in the colony, though in his haste to leave for England, Montagu neglected to inform Arthur, who later wrote:

'You may imagine my surprise at recg. a letter from Mr Montagu announcing his arrival in England; and informing me that he had left my affairs in your hands wh. you had kindly undertaken to manage for me, and for wh. I am truly obliged to you. This proves how essential it was that my matters shd. have not devolved on one trustee, and that they shd. have continued under your management as well as Mr Montagu's wh. was my intention. However, I hope no inconvenience will result from it'.<sup>975</sup>

In Montagu, Franklin perceived an unlikely alliance, for both men shared a vested interest in the continuation of transportation to Van Diemen's Land; one however had the future of the colony foremost in his mind - the other thoughts of personal and political aggrandisement. For now at least, Franklin could afford to let Montagu pursue his interests in London<sup>976</sup>, and busied himself in contemplation of the changes he could expect in the convict system, and his preoccupation with culture and social improvement in the colony. Montagu and his family stayed with the Franklins in the week leading up to their departure for England, and Lady Franklin recorded that 'we were exerting ourselves day and night to help them and write letters for them!'<sup>977</sup> Lady Franklin added:

'The approaching departure of the Montagu's and the arrival of the French keep and will keep us in town much beyond our ordinary time and to the destruction of all our contemplated schemes for the summer'.<sup>978</sup>

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<sup>975</sup> Arthur to WT Parramore, 27 September 1839, *Canadian Papers*, p. 270.

<sup>976</sup> Returning to London was a financial drain for Montagu - there is no doubt he was motivated by several mitigating factors. Writing in February 1839, Franklin requested that Montagu receive only half of his salary of £1200 from the 16 February, closing the period of his leave of absence (Franklin to Normanby, 15 February 1839, CO 280/114).

<sup>977</sup> Lady Franklin to Mrs Simpkinson, 6 November 1842, MS 248/174/1-23.

<sup>978</sup> Lady Franklin to Mrs Simpkinson, 3 February 1839, MS 248/174/1-23

Notably, Lady Franklin remarked that a degree of Montagu's 'unpopularity' was a derivative of his 'supercilious and extremely disagreeable style of writing', and that it caused a great deal of 'irritation in the minds of people generally'.<sup>979</sup> There must have been some cordiality in the relationship before Montagu left for England however, and their friendly co-habitation suggests that Montagu was not so estranged from Franklin as one is led to believe in conventional accounts of the later breakdown between them. For example, Lady Franklin wrote in October 1838 that she and Mr Montagu 'were such good friends today', at a time when tensions were allegedly reaching their peak.<sup>980</sup> It was not the first time Franklin had taken in a disaffected guest however; after his dismissal, Maconochie and his family stayed at Government House until they were able to find alternative accommodation, and Lady Franklin actually felt compelled to show them a degree of compassion. This was a recurrent theme in Lady Franklin's life, and she often took it upon herself to try and cure her husband's adversaries of their mistaken virtues.<sup>981</sup> It was almost a hobby of sorts, and when she failed, she often exclaimed that it had come as an enormous shock to her, and that she had been blissfully deceived.

In the absence of Montagu, the influence of his senior officials weighed heavy still on Franklin, and in order to give effect to Glenelg's July instructions, Sir John submitted a list of regulations for a new gang confinement system based on Forster's recommendations which included a provision for

'Primary gangs, to which the convicts are sent upon their arrival, to be conducted as much as possible on the separate system, to consist of three hundred men each, to be employed at a distance from the settled districts, in opening communications to, and in clearing lands for sale'.<sup>982</sup>

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<sup>979</sup> *Ibid.*

<sup>980</sup> Lady Franklin to Mrs Simpkinson, 31 October 1838, MS 248/85.

<sup>981</sup> After the dispute with Maconochie and his wife, Lady Franklin recorded that 'I am haunted with the ardent desire to do them good and should be to happy to do so'. See Lady Franklin to Mrs Simpkinson, 26 September 1839, MS 248/174/1-23.

<sup>982</sup> Franklin to Glenelg, 15 February 1839 (No. 2), as reported in the British Parliamentary Papers (Transportation), Vol 6, Sessions 1810 - 41, p. 848.



Assignment was to follow their service in the gangs, receiving a wage of £12 per annum with tickets of leave being granted for good behaviour after specified periods.<sup>983</sup> Franklin also recommended that a colonist seeking convict servants was to be 'deemed qualified by the quarter sessions, with reference to character, or the possession of land'.<sup>984</sup>

In a bid to assign the convicts as quickly as possible from the gangs, Franklin recommended the shortest possible period of servitude in the first stage, although the Colonial Office was predictably critical of his proposal. Bourke agreed with Franklin, and echoed his recommendations that the period of servitude in public works might be shortened 'and the settlers allowed to obtain the benefit of a convicts labour, as a holder of a ticket of leave'.<sup>985</sup> In reply, the Colonial Office advised that 'for the future discipline of the convicts in that Island, he [Russell] thinks the periods of the convicts on their arrival in the colony to be worked in parties, as suggested by Sir John Franklin, are too short - they should in His Lordship's opinion not be less than one year, 18 months and two years, for the shorter terms of transportation - 18 months, 2 years and 3 years, for fourteen years convicts - and two years, 3 years and 4 years, for the life transports; - that is to say, the best conduct to be entitled to the shorter terms'.<sup>986</sup>

The new system at least afforded the colonists some of the benefits of the old assignment system, and for the first time in his administration, Franklin appeared to be placating both the officials of his own government, and the dissenting voices of those colonists with a vested interest in the continuation of convict assignment.

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<sup>983</sup> *Ibid*, p. 848.

<sup>984</sup> Franklin to Glenelg, 15 February 1839 (Despatch No. 2), as reported in the British Parliamentary Papers (Transportation), Vol 6, Sessions 1810 - 41, p. 849.

<sup>985</sup> Memorandum by Sir Richard Bourke, 26 December 1838, Papers Relating to Transportation and Assignment of Convicts, reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 748.

<sup>986</sup> Phillipps to Stephen, 5 July 1839, CO 280/114, p. 147.

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## 'Assignment Must in No Shape be Revived'

Montagu arrived in London in June 1839<sup>987</sup>, nearly two years after the release of the second volume of the Molesworth report. Armed with Franklin's despatches on the new system<sup>988</sup> and the hopes of the colonists for the continuation of assignment and transportation generally, Montagu was consulted by the Colonial Office a short time after his arrival in England.<sup>989</sup> Montagu was well received in Downing Street, his confidence buoyed by the flattering recommendations of his governor:

'The many kind attentions I have received from Your Lordship assure me that you will approve of my furnishing Mr Montagu the Colonial Secretary of VD Land, with this personal introduction to Your Lordship. I feel it indeed equally due to Your Lordship and the interests of the colony entrusted to my charge, that you have the opportunity of deriving any information you may require from an officer of such great experience and judgment as Mr Montagu, who in the course of the last 14 years has filled the situations of Private Secretary, Clerk of the Councils, Acting Treasurer and Colonial Secretary, which last office he has held upwards of four years. Upon all that regards the general administration of the government of this colony, its finances, revenue, statistics and prison discipline, Mr Montagu is competent, in no common degree to aid Your Lordships investigations. Mr Montagu had received a very gratifying testimony to the faithful, diligent and courteous discharging of his duties during a farewell address from the bankers, merchants, tradesman and most of the influential residents of Hobart Town, expressive also of the desire for his speedy return - I am happy to know that similar sentiments pervade the colony. My public despatches have on several occasions

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<sup>987</sup> Arthur recorded that he had received a letter from Montagu's wife, Jessy, dated 11 June 1839, from London. See Arthur to Montagu, 4 July 1839, *Canadian Papers*.

<sup>988</sup> Franklin, *Narrative*, p. 11.

<sup>989</sup> West, *History*, p. 486.

conveyed to Your Lordship my own testimony to his diligence ability and zeal in the public service'.<sup>990</sup>

Franklin had also written a personal letter to his friend, Sir George Back, asking him to welcome Montagu when he reached England:

'I shall be very glad if you become acquainted with him as he is thoroughly conversant with every matter bearing on the affairs of this colony - and I am happy to add that he had supported the measures of my government with a firmness and consistency which have secured to him my friendship'.<sup>991</sup>

The *Colonial Times* however back in Van Diemen's Land was not so charitable, writing after Montagu's departure from the colony that

'Captain Montagu, who while in this colony was indubitably the Governor thereof, [has] sold his very snug and comfortable estate of *Stowell*'.<sup>992</sup>

Lady Franklin also informed her sister that Montagu and his wife and children would soon be in England:

'I am not sure that you will like them, but you will find them gentlemanly and lady like, and you will find Mr Montagu very clever. He has many virtues also, and he has faults, which I believe he is not himself much disposed to admit, at least I am sure those faults I perceive in his character he does not think he possesses himself, and it may be one of his best excuses for not mending them. I also think that they may have been formed or

<sup>990</sup> Franklin to Glenelg, 14 February 1839, CO 280/116, p. 29. See Chapter 5 for a review of the testimony.

<sup>991</sup> Arthur to Back, 15 February 1839, as quoted in Fitzpatrick, *Franklin*, p. 207.

<sup>992</sup> *Colonial Times*, 8 October 1839. The editor however of the *Colonial Times* was Henry Melville - see chapter 2 for an analysis of Melville's long standing criticism of Arthur and his officials. *Stowell*, built for Montagu in 1831, still stands in Stowell Avenue, Battery Point. There is a rumour among locals that a ghost haunts the old mansion. Additions to the original house in the years that followed have obscured much of the original facade. One commentator also wrote: 'The hand and mind of man have been busy in improvement - well constructed roads, choice gardens, shrubberies and lawns everywhere, evidencing the various ideas of embellishment, refinement and comfort. Proudly pre-eminent o'er all competitors stands the palace of John Montagu, Esq, Colonial Secretary'. See David Burn, *Van Diemen's Land* (published in 1840), as quoted in Fitzpatrick, *Franklin*, p. 65. Montagu had resided at *Stowell* since 1832.

fostered in this colony, which sharpens peoples wits and is not the best school for simple minded policy or generous forbearance'.<sup>993</sup>

Lady Franklin also indicated that as 'much as Mr M. is to be regretted here, I think his return to England at the present moment may be of infinite service to the colony, whose interests are now in undeniable jeopardy'.<sup>994</sup>

Anxious as he was to allay his political masters of any doubt they might have entertained in his secretaryship after the Clapperton case, Montagu, in his official capacity, was well aware of the implications associated with a change in the management of the convicts in Van Diemen's Land. With thoughts of self preservation and personal aggrandisement foremost in his mind, Lady Franklin recorded 4 years later that Montagu enjoyed the advantage of 'being on the spot with all his friends working with him'<sup>995</sup>, and hardly surprisingly, his observations on the subject of convict discipline were written in a manner 'more precisely adapted to his own views than those of the Governor'.<sup>996</sup> Having already been in England a decade earlier, Montagu knew exactly how to move among the Downing Street set. Lady Franklin prophetically added;

'He is a very gentlemanly and extremely clever man of good connections and fortune. He will I think have much influence at the Colonial Office'.<sup>997</sup>

Some of the findings of the Committee however had fallen out of favour with the House of Commons since their publication on 3 August 1838, precipitated by the crowded condition of the hulks, which had evoked serious complaints in England, and by a constant demand in the colonies for cheap convict labour.<sup>998</sup> The home government was also mindful of the great expense associated with Molesworth's recommendations. The British Treasury was determined to reduce spending, and at the top of its list was the

<sup>993</sup> Lady Franklin to Mrs Simpkinson, 3 February 1839, as quoted in Fitzpatrick, *Franklin*, p. 207.

<sup>994</sup> Lady Franklin to Mrs Simpkinson, 13 February 1839, MS 248/174/1-23

<sup>995</sup> Lady Franklin to Mrs Simpkinson, 10 January 1843, MS 248/174/1-23.

<sup>996</sup> *Ibid.*

<sup>997</sup> Lady Franklin to Mrs Simpkinson, 3 January 1839, as transcribed by G Mackenness, vol 1, p. 54.

<sup>998</sup> West, *History*, pp. 485-6.

burden of convict expenditure both at home and in the colonies.<sup>999</sup> Based on an average yearly total of 4000 convicts, transportation to Australia was the least burdensome, costing the British Treasury £60,000 a year, compared to over £120,000 a year to confine the convicts in British hulks, and nearly £360,000 a year to keep them in British penitentiaries.<sup>1000</sup> Transportation however had come under fire after Molesworth's reports, and the Colonial Office was undecided how to dispose of the convicts in a manner that pleased both the social reformers and the Exchequer. Molesworth argued against a return to the former system of transportation, and proposed in its stead that a greater share of the land fund should be diverted to immigration.<sup>1001</sup>

It was an opportune moment for Montagu; Lord John Russell had just taken over the Colonial Office in September 1839<sup>1002</sup>, which signalled a significant shift in support for the Molesworth recommendations.<sup>1003</sup> Although an integral member of the Molesworth Committee, Russell had some reservations about its findings, and actually had to be reminded by Lord Howick, Parliamentary Under Secretary at the Home Office, that he was obliged to follow its lead. Russell eventually implemented some of the proposals, but it was observed that he did so with 'much diffidence'.<sup>1004</sup> Russell was under a great deal of political pressure at the time, and was busy negotiating with the 'radicals' and Chartists on the subject of the corn laws, the voting ballot and other internal affairs. Indeed, his transfer to the Colonial Office was seen as a destabilising influence for the future of the liberal government in England, although his experience would be welcomed

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<sup>999</sup> Shaw, *Convicts and the Colonies*, p. 256.

<sup>1000</sup> *Ibid.*, p. 274.

<sup>1001</sup> West, *History*, p. 485.

<sup>1002</sup> 2 September 1839.

<sup>1003</sup> Russell and Lord Howick, Secretary at the War Office, represented the cabinet and were known to be committed to reforming rather than to abolishing transportation (Ritchie, 'Unclean Thing', p. 147). In contrast, Normanby placed Australia in terms of colonial importance behind Canada, Jamaica, Malta, the Ionian Islands, Gibraltar, the Western Coast of Africa and the Cape of Good Hope (p. 157). The Whigs did not always rush their fences, wrote Ritchie (p. 158). Russell was once quoted as having declared himself 'an enemy to extensive reform because he found that every principle of that sort led to a remodelling of all our political institutions which he was far from wishing' (Woodward, *The Age of Reform*, p. 55).

<sup>1004</sup> Shaw, *Convicts and the Colonies*, p. 274.

in colonial affairs.<sup>1005</sup> It was no wonder that Montagu was pleased to inform Franklin in December 1839 that

'the great transportation question was by no means set at rest and that Lord John Russell was in great doubt as to Captain Maconochie's system [on Norfolk Island]'.<sup>1006</sup>

Only days before Montagu embarked for London, the *Hobart Town Courier* had published the recommendations of the Molesworth Committee on Transportation.<sup>1007</sup> However, unknown to both Montagu and Franklin, Russell, then Secretary of State at the Home Office, had already drawn up a new probation system memorandum in January 1839 which totally (and not unexpectedly) abolished assignment in both colonies, but did not advocate the abolition of transportation to New South Wales and Van Diemen's Land.<sup>1008</sup> Instead, the number of convicts that would be sent to the colonies would be dramatically reduced until he had had time to decide on an alternative course of action.<sup>1009</sup> Russell's Parliamentary Non Permanent Under Secretary, Fox Maule, wrote:

'I am directed by Lord John Russell to acquaint you, for the information of Lord Glenelg, that, in conformity with the intentions of government on the subject of transportation, he proposes to make the following arrangements: -

1<sup>st</sup>. The number of convicts to be employed in the hulks in Great Britain during the present year will be increased to 3500.

<sup>1005</sup> Bentley, *Politics Without Democracy*, p. 112.

<sup>1006</sup> Lady Franklin's Journal, 23 May 1840, MS 248/174/1-23.

<sup>1007</sup> *Hobart Town Courier*, 1 February 1839. Montagu also indicated in a letter to Maconochie that Franklin was in possession of a copy of the 'Report on Transportation of a Select Committee of the House of Commons'. Montagu, writing on behalf of Franklin, demanded a statement from Maconochie supporting his claims published in the Report. See Montagu to Maconochie, 15 February 1839, as reported in the British Parliamentary Minutes (Transportation), Vol 6, Sessions 1810 - 1841, p. 847.

<sup>1008</sup> The lengthy memorandum is titled 'Note on Transportation and Secondary Punishment', and is dated 2 January 1839. The memorandum is reported in the British Parliamentary Minutes (Transportation), Vol 6, Sessions 1810 - 1841, p. 737.

<sup>1009</sup> See SM Phillipps to Sir George Grey, 8 January 1839. Grey's Under Secretary, Fox Maule, then forwarded it onto Sir George Grey, on 30 January, containing his own summary. See Maule to Grey, 30 January 1839, Whitehall, *HRA*, I, XX, p. 154.

2<sup>nd</sup>. The number of convicts to be employed at Bermuda will be increased to 1000, of whom 200 will be sent out in the spring and 200 at the end of the year.

3<sup>rd</sup>. The number of prisoners in the Penitentiary will be for this year 800, being an increase of 250.

4<sup>th</sup>. It is not proposed at present to diminish the number of convicts to be sent from Ireland.

5<sup>th</sup>. The probable number of convicts to be transported this year will consequently be about 2000.

6<sup>th</sup>. It is proposed to improve the system of punishment and instruction now pursued on board the hulks.

7<sup>th</sup>. It is proposed to build a new prison on the separate system for 500 prisoners.

While these changes are taking place at home', continued Maule, 'accompanying alterations must take place abroad; and Lord John Russell directs me to transmit to you the following suggestions for Lord Glenelg's consideration: -

1<sup>st</sup>. That instructions should be sent out to prepare the Governors of New South Wales and Van Diemen's Land for the immediate diminution and approaching discontinuance of the practice of assignment.

2<sup>nd</sup>. that instructions should likewise be sent to prepare buildings in Norfolk Island for the reception of convicts from the United Kingdom, and that the government of that Island should be entrusted to some officer in whose zeal and intelligence Lord Glenelg can confide.

3<sup>rd</sup>. That general instructions should be given as to the future treatment of convicts confined in Australian settlements, subject to such variations from time to time as experience may suggest, founded on the principles stated in the report of the Committee of the House of Commons, and in conformity with the views of government.'

Russell's recommendations followed on from an earlier letter to Glenelg, Secretary of State at the Colonial Office, in which he planned to diminish the number of transports

sent to the Australian colonies.<sup>1010</sup> In short, transportation of convicts sentenced to terms of seven years would be discontinued, convicts with sentences of 10 years or more would be sent to Norfolk Island and Port Arthur, and the greatest encouragement would be given to free migration to the Australian colonies.<sup>1011</sup> In his note, Russell also indicated that

'Sir Richard Bourke, a very competent judge on this subject, in 1834 recommended to Lord Stanley the discontinuance of transportation to the settled parts of New South Wales. He is now of opinion that a new colony should be founded on the north-western coast of New Holland, that assignment should not be there permitted, but that each convict should work one, two or three years on public works, and then be employed on an improved system of tickets of leave'.<sup>1012</sup>

This was not really what Russell had hoped for; he was neither prepared to establish another colony in New Holland for the purpose of punishing the convicts nor expend £360,000, 'or probably much more', on a new penitential system in Britain.<sup>1013</sup> Assignment had been terminated, and transportation to the settled districts of New South Wales and Van Diemen's Land was all but at an end after the recommendations of the Molesworth Committee. Bourke however had impressed Russell just as he had impressed Molesworth, who observed that

'Sir Richard Bourke appears to have acted with wisdom, justice and humanity in his treatment of the convict population'.<sup>1014</sup>

Molesworth however was not so complimentary of Arthur:

<sup>1010</sup> Phillipps to Stephen, 15 April 1837, Accounts and Papers of the Select Committee on Transportation, Vol XXII, pp. 310 - 313 (Microfilm). See Chapter 4 for an account of Russell's recommendations.

<sup>1011</sup> Fox Maule to Sir George Grey, 30 January 1839, Whitehall, *HRA*, I, XX, p. 154.

<sup>1012</sup> SM Phillipps to Sir George Grey, 8 January 1839, as reported in the British Parliamentary Minutes (Transportation), Vol 6, Sessions 1810 - 1841, p. 742.

<sup>1013</sup> Shaw, *Convicts and the Colonies*, p. 274.

<sup>1014</sup> Report from the Select Committee on Transportation, 3 August 1838, as reported in the British Parliamentary Minutes (Transportation), Vol 6, Sessions 1810 - 1841, p. xxix.



'The severer system of summary jurisdiction pursued in Van Diemen's Land has, perhaps, slightly diminished the amount of crime cognizable by the superior courts, and diminished the number of grave offences; but it has produced this result, by erecting a number a petty offences into crimes'.<sup>1015</sup>

While the Colonial Office procrastinated over its problems, the effects of Russell's intermediary recommendations were immediately felt in the colony; in 1838, the number of convicts transported to the colony had again risen to 2209<sup>1016</sup>; in 1839, that number fell just as quickly to 1427.<sup>1017</sup> Some colonists in Van Diemen's Land, including Montagu, interpreted the decrease in convict numbers as an intention to terminate the system altogether, and on the face of Russell's report, they were probably right.<sup>1018</sup> Having now perused the most recent reports in London, Montagu wrote:

'Sir John's despatch to the Secretary of State No. 31 of January last furnishes the explanation for his demands [for 10,000 convict suits], but when that despatch was written it was not known that the number of convicts to be transported to VD Land from England would be so greatly reduced, or a smaller supply would have been requested. I would suggest the expediency of demanding about one fourth of the quantity at present demanded'.<sup>1019</sup>

Indeed, Franklin indicated in his despatch that only one years supply of clothing has been ordered for New South Wales and Van Diemen's Land, and that the Board had not even forwarded the convict clothing demanded for 1838 and 1839.<sup>1020</sup>

In reply, the Colonial Office minuted:

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<sup>1015</sup> *Ibid.* Molesworth also added that 'Sir G. Arthur is contradicted by numerous facts stated by himself' (p. xxi). Ironically, Arthur achieved his goal: Molesworth declared that 'transportation, though chiefly dreaded as an exile, undoubtedly is much more than exile; it is slavery as well' (p. xx).

<sup>1016</sup> Shaw, *Convicts and the Colonies*, p. 367.

<sup>1017</sup> *Ibid.*, p. 367.

<sup>1018</sup> West, *History*, p. 485.

<sup>1019</sup> Montagu to Russell, 24 June 1839, London, CO 280/114, p. 339. Franklin's report was dated 30 January 1839 (p. 33).

<sup>1020</sup> Fitzpatrick, *Franklin*, p. 225.

'The requisition in question appears to have been framed without a knowledge of the reduction adopted by HM Govt to diminish the number of convicts to be transported annually and His Lordship would recommend that one fourth of the quantity of clothing applied for be supplied'.<sup>1021</sup>

Montagu had not yet reached England when a copy of a despatch from the outgoing Secretary of State at the Colonial Office, Lord Normanby, to Governor Gipps 'for the immediate diminution and approaching discontinuance of the practice of assignment' was forwarded to Franklin, after months of speculation in the colony.<sup>1022</sup> Included in the despatch was a copy of Russell's lengthy 2 January 1839 'Note', from which Normanby advised 'you will learn the general intentions of Her Majesty's Government as to the changes to be immediately effected in the existing system'. Normanby also indicated that 'the first result of the proposed arrangements will be a material diminution in the number of convicts to be transported during the present year'.<sup>1023</sup> It had taken some time for Normanby (after taking office from Glenelg) to act on Russell's January instructions, which indicated Russell was no nearer to deciding on the fate of transportation than he was in January. At the time of writing the despatch however, Maconochie's 'marks system' was under consideration by the home government after favourable comments by the Molesworth Committee, and in May 1839 Normanby sent Gipps a despatch marked 'confidential' asking him to recommend a suitable officer to test the proposals on Norfolk Island. Normanby indicated that the home government favoured the appointment of Maconochie, but it was thought 'unadvisable to make this selection' without first referring the proposition to Gipps and Franklin.<sup>1024</sup> While Gipps considered Normanby's proposition, an Order in Council dated May 1840 was approved appointing Norfolk Island and Van Diemen's Land exclusively as the places to which convicts should in future be transported.<sup>1025</sup> Gipps forwarded Normanby's despatch to Franklin, who in turn offered the appointment to Maconochie. Gipps later wrote that Maconochie's

<sup>1021</sup> *Ibid.*, p. 339-340.

<sup>1022</sup> Normanby to Gipps, 11 May 1839, Downing Street, *HRA*, I, XX, p. 152.

<sup>1023</sup> *Ibid.* The despatch is also reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 752.

<sup>1024</sup> Normanby to Gipps, 11 May 1839, *HRA*, XX, p. 155.

<sup>1025</sup> Order in Council, 22 May 1840, reported in the British Parliamentary Minutes (Transportation), vol 7, Sessions 1843 - 1847, p. 68.

appointment had put an end to the 'estrangement which had for above a year existed between him and Sir John Franklin', and reported that Maconochie arrived in New South Wales a very short time later.<sup>1026</sup> Russell had still not signed the death knell for transportation to the settled districts of New South Wales and Van Diemen's Land however, and was perhaps hoping for something to convince him otherwise.

The system of assignment had already been terminated<sup>1027</sup>, and it had been determined that all new prisoners should be worked in gangs or some other severe punishment, that is if they were to be even sent to the colony.<sup>1028</sup> Montagu had only missed Normanby's despatch by one month, and Russell was still considering the future, and nature, of transportation to the colonies. Montagu wasted no time in acquainting himself with the Downing Street ministry, travelling from Falmouth to London in only six days. Commenting on his arrival, Forster later explained in a letter to Lady Franklin that Montagu had sent 'his letters on prison discipline and the state of the colony as regards its fitness for an assembly' to Lord Normandy, and would write as soon as he had a reply.<sup>1029</sup>

Having only recently arranged a meeting with Russell at the Home Office, Montagu received a letter from Arthur which perhaps altered the urgency of his mission. Writing from Toronto in July, Arthur was surprised that Franklin had allowed him to return to England, and alluded to the pending crisis in Van Diemen's Land:

'I knew indeed your wish to return to England; but, considering the state of V.D. Land - the value of your office - and your usefulness in it - I had no more notion you could have been spared than that - -! I really cannot at the moment hit upon anything quite so improbable'.<sup>1030</sup>

<sup>1026</sup> Gipps to Normanby, 6 July 1840, *HRA*, I, XX, p. 401. Maconochie's appointment is discussed further in chapter 10.

<sup>1027</sup> *Ibid.*, p. 486.

<sup>1028</sup> West, *History*, p. 486. Upon arrival at Falmouth, Montagu stayed at the home of General Worsley, his father in law, for three days before travelling to London. See Lady Franklin's Journal, 22 October 1839, MS 248/157.

<sup>1029</sup> Lady Franklin's Journal, 22 October 1839, MS 248/157.

<sup>1030</sup> Arthur to Montagu, 4 July 1839, *Canadian Papers*, p. 187.

Arthur however believed, incorrectly, that the urgency of Montagu's return was intimately connected with the Clapperton case, and he warned his protégé in no uncertain terms that it would be foolish to pursue the matter in London:

'You will, I trust, not have a word to say about Clapperton's case in Downing Street. It is all nonsense to be explaining to James Stephen or to any other person. Subjects of that kind should be treated with indifference. Do not think of defending yourself unless you are called upon to do so about any matters whatever; take it for granted that you stand well upon every point - it is the best way'.<sup>1031</sup>

Nevertheless, Arthur concurred with Montagu that he had acted wisely in returning to London, and would undoubtedly be consulted by the Colonial Office. Arthur added:

'I have no doubt your explanation and information upon many subjects in England will be most useful to the colony of VD Land'.<sup>1032</sup>

Prophetically he added:

'but I doubt if you will be able to remove all the mischief which Captn. Machonocha [sic] has done'.<sup>1033</sup>

Clapperton aside, Arthur suspected that Montagu had no intentions of returning to Van Diemen's Land, and remarked in a letter to his friend Colonel Fox that Montagu had tired after 14 years of office in Van Diemen's Land and desired employment in the United Kingdom or nearer than Australia. Arthur hoped he would be successful in 'his object', and that his other nephew in law, Forster, would succeed him as Colonial Secretary in Van Diemen's Land.<sup>1034</sup> In December, Arthur reiterated his hope that Forster would be

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<sup>1031</sup> *Ibid.*, p. 188.

<sup>1032</sup> *Ibid.*, p. 188. This is what Franklin hoped for in any case.

<sup>1033</sup> *Ibid.*, p. 188.

<sup>1034</sup> Arthur to Fox, 2 September 1839, *Canadian Papers*, p. 230.

looked upon favourably for Montagu's post if he were to get 'something else', and that he welcomed the Chief Police Magistrate's regular 'enclosures'.<sup>1035</sup>

It was clear too that Arthur's friendship with his nephew-in-law had not waned since leaving Van Diemen's Land, and he concluded his letter with a request for Montagu to 'call upon Mr [Gordon] Gairdner immediately and enquire if he has any knowledge' of a packet he had sent to him.<sup>1036</sup> Arthur explained that the packet contained letters to Montagu and another to Sir John Franklin; 'In my letter to you', explained Arthur, 'I alluded to many things which I should regret to have read to any person but yourself. I feel quite uncomfortable upon the subject. My money concerns are of no moment compared with other persons and things discussed in that letter'.<sup>1037</sup>

Arthur was right; Montagu had not attracted serious criticism in London after the Clapperton affair, and was now free to concentrate his attention on securing favour with Downing Street. Montagu had 'sniffed the spirit of the Molesworth Committee and bidden assignment farewell'<sup>1038</sup>; ever politically astute, the ambitious pro-consul would not dissent too loudly.<sup>1039</sup> Very few people however anticipated his wholesale rejection of

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<sup>1035</sup> Arthur to Montagu, 30 December 1839, *Canadian Papers*, p. 370.

<sup>1036</sup> Gordon Gairdner served as Chief Clerk at the Colonial Office.

<sup>1037</sup> Arthur to Montagu, 4 July 1839, *Canadian Papers*, p. 187.

<sup>1038</sup> Fitzpatrick, *Franklin*, p. 257. According to Ritchie, it [was] incomprehensible that men like Russell would have felt bound to concur with, or act upon, the recommendations of a 27 year old radical [Molesworth], that is, unless he echoed their opinions (Ritchie, 'Unclean Thing', p. 158). Montagu was in a similar predicament and it was unlikely his objections would be considered favourably, if at all. Predictably, Montagu knew exactly what to say.

<sup>1039</sup> This is not to say that Montagu dismissed all of his uncle's sentiments, though he certainly exercised a degree of cautiousness in advocating the virtues of Arthur's system. What he did support was the basis that the first object of convict discipline was to strike terror into evil doers in the mother country, which had ensured the continuance of transportation when the issue was considered by Bigge some 20 years earlier. See Montagu to Under Secretary Vernon Smith, 12 August 1840, *HRA*, I, XX, p. 809. Montagu's comments echoed Arthur's, who had stated: 'My conviction is, looking to the real object of transportation, viz, the suppression of crime at home, and the punishment of the criminal' (Arthur to Goderich, 1 December 1827, *HRA*, III, VI, p. 366).

assignment, but not all. The extent of Montagu's about face on the issue of domestic servitude was obvious to some of his critics in Van Diemen's Land; writing some years later, Lady Franklin sensed that Montagu did not hold the common views of assignment formed by Lord John Russell, but found it politically prudent to revise his favourable opinion of that system:

'I have no doubt he tried to prolong the duration of assignment as long as possible, but finding this in vain and actuated I think to a great degree by an ardent desire to recommend himself... to Lord John Russell, he concocted a scheme, the best part of which he had borrowed but the main feature of which was the of concentrating the whole prisoner population of Van Diemen's Land, in Tasman's Peninsula.'<sup>1040</sup>

As evidence, Lady Franklin explained to her sister that Montagu had been given permission by Franklin to read his official despatches 'advocating an improved and modified system of assignment for the prisoners' on the voyage to England, and knew exactly what to concur with and what not.<sup>1041</sup>

It also brought back memories of Arthur's rebuke of Montagu in 1832 as 'having entirely overlooked the most important feature in the case' of reducing the expenditure of the colonies. Indeed, Montagu was quite proficient at not giving the whole story when he found himself in Downing Street.<sup>1042</sup>

When he met with Russell, Montagu rigorously opposed Maconochie's theory of reforming the convicts in separate penal stations and advocated 'a ticket of leave system in stages that would create character and self esteem by exposing convicts gradually to the temptations of society'. In place of assignment however, Montagu redeveloped the

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<sup>1040</sup> Lady Franklin to Mrs Simpkinson, 18 June 1841, as transcribed in G Mackaness, vol 1, p. 20. Montagu made this proposal to Under Secretary Vernon Smith on 12 August 1840.

<sup>1041</sup> *Ibid.*

<sup>1042</sup> See chapter 3 for a discussion about Arthur's rebuke.

gang theory first proposed by him in 1831. 'The roads', he observed, 'were to be made, public works to be completed and labour to be abundant.'<sup>1043</sup>

The collegial, even friendly nature of Montagu's correspondence with Franklin, was further evidence of his ambiguous relationship with the Franklins. Franklin's 'inaptitude' for public business was certainly a sore point with Montagu, and his cordiality and liberal sentiment to some of Arthur's 'innumerable enemies' irritated the old guard. That aside, Franklin was considerate, charitable and sympathetic, and even Montagu, the cold, calculating servant, must have found him good company and even engaging on some occasions. After all, Montagu had never really considered Franklin himself to be a threat to the "faction's" dominion until he returned to Van Diemen's Land in 1841; rather, it was officials like Maconochie, who was 'incapable of being either silent or unobtrusive'<sup>1044</sup>, and Lady Franklin, whose independence and confidence, coupled with her 'critical and analytical habits of thought'<sup>1045</sup>, which frustrated Montagu the most. This was reflected in Montagu's letters, and Franklin was more often than not portrayed as hopelessly weak and impressionable. In contrast, Lady Franklin emerges as a more serious threat to the establishment.

Montagu also wrote to tell Forster that 'Captain Maconochie's character is well known at the Colonial Office, and that another instance of this treachery to Sir John has been detected'.<sup>1046</sup> Montagu however was wrong, and whether they actually liked him personally or not, Maconochie was appointed to the office of Superintendent on Norfolk Island after he received favourable recommendations from Gipps and Franklin. Indeed, Franklin's kindness had prevailed again, and despite all that had transpired between them, he urged Maconochie to accept the post, who left at once for Sydney.

Russell was sufficiently impressed with Montagu that he asked him to make further recommendations as to the continuation of transportation to the colonies. Montagu

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<sup>1043</sup> West, *History*, p. 486.

<sup>1044</sup> Fitzpatrick, *Franklin*, p. 126.

<sup>1045</sup> *Ibid.*, p. 39.

<sup>1046</sup> Lady Franklin's Journal, 22 May 1840, MS 248/88.

perused the report of the House of Commons Committee on Transportation<sup>1047</sup>, and the papers presented to Parliament relating to transportation and the assignment of convicts.<sup>1048</sup> He also examined Russell's January 1839 recommendations<sup>1049</sup>, and understood that 2000 convicts were to be transported annually to Norfolk Island, and then dispersed to the other Australian colonies after the expiration of their sentences.<sup>1050</sup> Russell's recommendations also indicated that more convicts were to be kept in Britain, in the hulks, or sent to Bermuda, possibly reflecting the advice of Bourke, who had earlier urged Glenelg to limit the transportation of offenders by five-sixths of the number usually sent out if assignment were to be abolished.<sup>1051</sup> However, this also reflected Russell's own observations of April 1837, in which he spoke of a prison population [that] threatened to overgrow and master the respectable community in [Van Diemen's Land].<sup>1052</sup> Montagu was also mindful of Normanby's direction that 'the final result of the proposed arrangements will be a material diminution in the number of convicts to be transported during the present year', and that there was no mention of how many convicts, if any, would be sent to Van Diemen's Land from Norfolk Island.<sup>1053</sup>

Even though Russell stopped short of abolishing transportation to the settled districts of New South Wales and Van Diemen's Land, Montagu, like most observers, interpreted the recommendations as an indication that 'transportation (and not just assignment) might no longer be depended upon for labour'.<sup>1054</sup>

In October 1839, Montagu established himself as the architect of the continuation of transportation to Van Diemen's Land by submitting a formal proposal for the management of the convict system in New Holland:

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<sup>1047</sup> Montagu refers to the Committee's recommendations several times in his October 1839 Memorandum.

<sup>1048</sup> *Ibid.*

<sup>1049</sup> *Ibid.*

<sup>1050</sup> Montagu to Normanby, 10 October 1839, Brighton CO 280/117, p. 67 (1<sup>st</sup> point). The memorandum comprises 30 points in all. See Appendix A for a copy of the memorandum.

<sup>1051</sup> Bourke to Glenelg, 22 November 1838, *HRA*, I, XIX, p. 188.

<sup>1052</sup> See chapter 4 for a discussion of Russell's comments.

<sup>1053</sup> Normanby to Gipps, 11 May 1839, Downing Street, *HRA*, I, XX, p. 152.

<sup>1054</sup> Montagu to Normanby, 10 October 1839, 22<sup>nd</sup> point.



'I have the honour, in obedience to Your Lordships request, to submit for your consideration a memorandum in transportation, and if it should be found to contain any suggestion beneficial to the public interests or to the unfortunate convict chaps in the Australian Colonies, I shall derive much gratification. I have been unwilling to encumber the memorandum with many important details which will be necessary, hereafter, for the perfect development of the plan proposed, although not necessary in the first instance for its present apprehension, but I shall be most happy to supply the deficiency if Your Lordship should honour me by requiring it.'<sup>1055</sup>

Sensing that Van Diemen's Land was on the brink of loosing the bulk of its convicts, Montagu suggested that that *all* the convicts on removal from Norfolk Island should be sent to Tasman's Peninsula where there existed a wide area of dispersal, and that further, it was desirable to discontinue New South Wales as a penal settlement, and to relieve it, at an early period, of its penal character and population. This accorded with Downing Streets desire to afford free institutions and government in New South Wales, although in doing so, Van Diemen's Land would be deprived of similar concessions for many years to come. This mattered little to Montagu, whose thoughts had been shaped by Arthur and his incessant attention to penology, and who now argued that all of the convicts hitherto transported to New South Wales would be transported to Van Diemen's Land. Montagu's plan, or so he thought, was perfect:

'The adoption of such a plan would be advantageous to both colonies, whilst both would be injured by dividing the convict labour between them'.<sup>1056</sup>

Montagu's plan however to utilise the Peninsula was hardly unique. In 1834, Arthur wrote:

'Macquarie harbour having been abandoned, my utmost attentions have been turned to Tasman's Peninsula, which is exceeding my highest expectations. Its capabilities as a

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<sup>1055</sup> Montagu to Normanby, 10 October 1839, 22<sup>nd</sup> point.

<sup>1056</sup> Montagu to Normanby, 10 October 1839, 23<sup>rd</sup> point.

penal settlement are daily more and more developing themselves. It contains 175,000 acres of land, most of it sterile, but excellently adapted for the employment in various ways of a numerous body of convicts; and I anticipate the advantages connected with it, will soon be found so great, if judiciously developed, as to render it unnecessary to keep up any of the penal settlements of New South Wales, with the exception of Norfolk Island, and even that I should consider at no distant period may be abandoned!<sup>1057</sup>

Notably, Montagu advised Russell that the Peninsula contained '200,000 acres of land' over which the convicts might be dispersed, although Franklin, who ordered a complete survey of the region, found this estimation to be widely exaggerated.<sup>1058</sup>

Similarly, Bourke expected that no more convicts would be sent to New South Wales as early as 1837, and that instead the convicts could be worked in gangs for three or more years on the public works, and then 'employed on an improved system of tickets of leave'.<sup>1059</sup> Additional to this was the fact that Montagu had just read Russell's January note which spoke favourably of Bourke's proposal to discontinue transportation to New South Wales and for his system of gang punishment, but was anxious about the cost of building penitentiaries in Britain to cater for the overflow. Montagu knew Russell wanted to 'improve the moral character' of New South Wales, which had become too well settled and too civilised<sup>1060</sup>, without having to keep the convicts in England at great expense but needed somewhere else to send the convicts without incurring the usual establishment costs. It was an opportunity that could not have been better scripted for Montagu; he knew just what to recommend - full scale transportation to the unsettled district of Tasman Peninsula and a new system of punishment to replace the outgoing system of assignment that satisfied all parties. Indeed, Molesworth indicated that

<sup>1057</sup> Arthur to Goderich, August 1834, as quoted in I Brand, *Penal Peninsula*, (Jason Publications, Hobart, 1978), p. 12. See also chapter 9.

<sup>1058</sup> This is discussed further in chapter 9.

<sup>1059</sup> See chapter 4. See also Phillipps to Grey, 8 January 1839, as reported in the British Parliamentary Minutes (Transportation), Vol 6, Sessions 1810 - 1841, p. 742.

<sup>1060</sup> Shaw, *Convicts and the Colonies*, p. 275.

'convicts sentenced for long periods might be sent to the present penal establishments of Tasman's Peninsula and Norfolk Island, provided the system of punishment now pursued there were completely altered'.<sup>1061</sup>

It was the vital moment to secure continued substantial transportation to Van Diemen's Land and Russell would hardly settle for only a slight increase in numbers - he had that already - Montagu had to sell Van Diemen's Land as a premier convict destination to the Colonial Office, and this meant explaining that the colony could absorb all of the convicts sent out to the colonies. Subsequently, the extent of the economic depression in Van Diemen's Land was misrepresented, or rather omitted, by Montagu when the new system was proposed.

These political considerations notwithstanding, the urging upon Russell of an actual increase in the number of convicts sent to Van Diemen's Land is surprising if not extraordinary when viewed against the backdrop of a depressed colonial economy and already burgeoning convict population. Montagu argued that Tasman Peninsula was large enough to contain 'any' number of convicts, and theorised that only a few 'inferior' officers, who were the least expensive, would be required to assist the military already stationed in Van Diemen's Land in supervising the convicts. Montagu explained that the Peninsula's 'natural impediments would enable the different classes of convicts to be widely dispersed, and easily employed there, without being too thickly congregated'.<sup>1062</sup> However, Port Arthur housed only 1100 convicts when Arthur left Van Diemen's Land in 1836, and in 1839, that number had increased to only 1490, including the men already working at the coal mines.<sup>1063</sup> Indeed, West said that Montagu's theory of a 'boundless labour supply' was 'gigantic' in proportion, and assumed the air of a misguided 'philanthropy'.<sup>1064</sup>

<sup>1061</sup> Report from the Select Committee on Transportation, 3 August 1838, as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. xliii.

<sup>1062</sup> Montagu to Normanby, 10 October 1839, 4<sup>th</sup> point.

<sup>1063</sup> Brand, *Penal Peninsula*, p. 52.

<sup>1064</sup> West, *History*, p. 497.

Like Arthur, Montagu's vision for Van Diemen's Land was as an 'extensive gaol to the empire'<sup>1065</sup> whereby all the 'prejudices and odium' of the New South Wales penal settlement could be safely, and profitably, diverted to the island colony.<sup>1066</sup> Similarly, and in some form of belated compensation, he also added that a time would come when 'the colony rendered transportation to its shores no longer desirable, and the inhabitants would be as qualified for free institutions as those in New South Wales'.<sup>1067</sup> Montagu envisaged a model system of punishment for Van Diemen's Land, perhaps stronger than the one that proceeded it. In contrast Forster wrote in March 1840 that:

'I have too much reason to believe that convicts who are sent to Port Arthur for the most dreadful crimes - and who for the most part will be found men of the most useful description - are selected to fill places of trust and ease without proper regard to their infamous characters, and long career of crime'.<sup>1068</sup>

Montagu, like Arthur, was a capable administrator, although perhaps over confident in his own abilities. Montagu was witness to the 'compulsive and highly effective' government of Arthur, who exhibited a 'great deal of personal discretion' and was 'little checked by public opinion'. He watched as Arthur disposed of the 'mediocre, dishonest and incompetent officials sent to Van Diemen's Land by the British Government'<sup>1069</sup>, and replaced them with men more suited to his own high standards of public duty. He also observed how the Colonial Office held Arthur in high regard, and in particular James Stephen, who 'was always ready to support him against his critics'.<sup>1070</sup> When Arthur returned to England however, he was replaced by a governor 'deficient in the authority and self reliance required in such an office', wrote Stephen, 'and there is a constant tendency to convert the government into an oligarchy - to the serious discontent of the

<sup>1065</sup> Arthur to Bathurst, 21 April 1826, *HRA*, I V, pp. 152 - 3.

<sup>1066</sup> Montagu to Normanby, 10 October 1839, 22<sup>nd</sup> point.

<sup>1067</sup> Montagu to Normanby, 10 October 1839, 28<sup>th</sup> point. See Arthur's observations on free institutions in chapter 1.

<sup>1068</sup> Forster to Franklin, 7 March 1840, as quoted in Brand, *Penal Peninsula*, p. 52.

<sup>1069</sup> AGL Shaw, 'The Eldershaw Memorial Lecture: A Colonial Ruler in Two Hemispheres; Sir George Arthur in Van Diemen's Land and Canada', *Tasmanian Historical Research Association*, vol 17, (1970), p. 85.

<sup>1070</sup> AGL Shaw, 'Sir James Stephen, Sir John Franklin and Sir John Eardley Wilmot', *Tasmanian Historical Research Association*, vol 36, (1989), p. 144. See also chapter 5.

great mass of the population'.<sup>1071</sup> Described as lacking 'sufficient firmness and self reliance to control and govern the discordant elements by which he is surrounded'<sup>1072</sup>, Franklin quickly fell foul of Montagu, who like Forster, 'needed a strong superior'<sup>1073</sup> to watch over him. 'Franklin', observes historian Shaw, 'showed that he could not control his subordinates, and therefore his qualifications for office were deficient'.<sup>1074</sup> In contrast, Montagu, the efficient, competent and ambitious civil administrator, clearly impressed his political masters in London, later drawing from Stephen the flattering observation that there had been a 'obvious decline from the method and energy with which Montagu had conducted affairs'.<sup>1075</sup> And later Stephen, writing to then Secretary of State, Lord Stanley, declared that

'if one were to recall the management under Sir George Arthur and Mr Montagu... you would be convinced it is to the absence of such conductors of public affairs... that the present confusion is to be ascribed'.<sup>1076</sup>

Having found himself in London at what was arguably the most critical time in the history of transportation to Van Diemen's Land, it is hardly surprising that Montagu felt an overwhelming urge to please his political masters by promoting a new system of transportation intimately wedded to the current tide of opinion sweeping Downing Street. Assignment had clearly been pushed aside, but opportunities like this were seldom held out to civil servants like Montagu. It was unthinkable that the ambitious Colonial Secretary would promote himself as anything but committed to the new gang system. It only remained for Montagu to ensure that he, and not Franklin, absorbed the approbation of his superiors in the public service. One must not forget either that his appetite for higher service had been whetted as early as 1830, when he attracted the attention of Hay

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<sup>1071</sup> *Ibid.*, p. 144.

<sup>1072</sup> *Ibid.*, p. 145.

<sup>1073</sup> *Ibid.*, p. 147.

<sup>1074</sup> *Ibid.*, p. 146.

<sup>1075</sup> *Ibid.*, p. 148.

<sup>1076</sup> *Ibid.*, p. 148. These were indeed strong words from a man who was described by one commentator as 'Mr Mother-country'. See Breitenbach, *The Development of the Secretaryship to the Government at the Cape of Good Hope Under John Montagu 1843 - 1852*, p 182.

in London by urging a change to system of public works in the colony.<sup>1077</sup> His suggestions for working the convicts in gangs on the roads and in the unsettled districts was also clearly prevalent in the new proposals, encompassing a certain and laborious fate for all convicts sentenced to transportation.<sup>1078</sup> Both Montagu and Forster had waited for Arthur to leave the colony before openly discussing the new system; Forster echoed Montagu's recommendations for working the convicts in gangs, and withdrawing the indulgences which many of the settlers had afforded their convict servants. The new governor was not so sure, though his first reports reflected much of his subordinates' thinking for a new system. Montagu was clearly intent on punishing the convicts for their misdemeanours, not rewarding them with indulgences.

What was clear too, however, was that Montagu was doing his best to make Van Diemen's Land more attractive to Downing Street by de-valuing New South Wales as a place of banishment for the convicts after serving their sentences on Norfolk Island. It had already been spoken about, but Montagu explained it in terms that made political and economical sense to the Colonial Office, even if his was a false economy. Just as Franklin had done, Montagu urged the government to redirect immigration to New South Wales where Crown lands were more extensive, and suggested that the employment of the ticket of leave men in the settled districts after their initial probation would supply Van Diemen's Land with enough labour to satisfy the colonists. In turn, he assured Russell that there was endless, secure and profitable employment on the Peninsula for any number of convicts detained there. Montagu suggested that migration 'deprived transportation of its terrors', and added that the government would have a better opportunity of affording the convicts more religious and moral instruction if it abolished the road and chain gangs in New South Wales. Additionally, Montagu envisaged sending 5000 convicts immediately from New South Wales to Van Diemen's Land, the total number employed in the service of the New South Wales government.<sup>1079</sup> Similarly, Montagu explained that from a financial point of view, his suggestions were extremely desirable; he envisaged a diminution of the charges for the maintenance and

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<sup>1077</sup> See chapter 3.

<sup>1078</sup> Montagu refers to it as 'uniform and certain' (Montagu to Normanby, 10 October 1839, 5<sup>th</sup> point).

<sup>1079</sup> Montagu to Normanby, 10 October 1839, 27<sup>th</sup> point.

superintendence of the convicts in New South Wales, and in Van Diemen's Land, he proposed that the convicts could be lodged, fed and clothed by their own labour in the unsettled districts, decreasing expenditure by £10,000 per annum. Montagu's proposal also accorded with the prudential approach of Treasury, and less than two years earlier, James Stephen had indicated that

'it would be futile after what has passed to express any opinion opposed to that of the Treasury'.<sup>1080</sup>

Unfortunately for Montagu and Van Diemen's Land, the new proposal was to cause a great deal of bitterness in the colony after 1840. Synonymous with Arthur, Montagu observed that the colonists in Van Diemen's Land had always submitted to the laws which 'infringed upon their rights as Englishmen from pecuniary motives', though he thought that those 'motives would cease to operate under the new regulations', the consequences of which he described as being of a 'serious nature'.<sup>1081</sup> Montagu concluded by assuring Russell that the introduction of free institutions in the colony was incompatible with penal discipline, and that the application of the 'system' in Van Diemen's Land was 'politically' safe.<sup>1082</sup> In effect, Montagu forfeited the political rights of the colonists by encouraging the perpetuation of a system that did not even provide the majority of colonists with cheap or constant labour.

The Colonial Office however was so impressed with Montagu's memorandum that an accompanying minute read:

'The regular course of proceedings would be to send this to the Home Office and to thank the writer for the communication. But perhaps Lord John Russell would like to read it before it is communicated to Lord Normanby. This should [then] be sent to the Home Office as it relates to convict discipline for Lord Normanby's information.'<sup>1083</sup>

<sup>1080</sup> Stephen to Spearman, 5 March 1838, as quoted in Shaw, *Convicts and the Colonies*, p. 265.

<sup>1081</sup> Montagu to Normanby, 10 October 1839, 26<sup>th</sup> point.

<sup>1082</sup> *Ibid.*, 27<sup>th</sup> point.

<sup>1083</sup> Minute, 11 October 1839, CO 280/117, p. 67.

His recommendations were well received by Russell, so much so that on 30 June 1840 the Secretary of State advised Franklin that the home government had decided on changes to the system of transportation set down by the recommendations of the Molesworth Committee, and by Normanby's despatch of May 1839.<sup>1084</sup> It is not surprising Russell gave so much weight to Montagu's proposal; while he was in England, Franklin wrote to Montagu and assured him that

'you are better qualified than any other person to give full information on any subject connected with the colony'.<sup>1085</sup>

There is no doubt Montagu proudly presented Franklin's letter to Russell when he spoke about the system he had formulated. The new method was to be known as the probation system, by which a greater number of prisoners were to be employed together in groups on the public works and concentrated in probation stations. The separate system of confinement was recommended to Franklin as the most 'efficacious and complete'<sup>1086</sup>, and assignment when once abolished, was in 'no way, shape or form to be revived'.<sup>1087</sup>

In fairness to Montagu, it should be emphasised that the proposal had the outwardly appearance of a significant victory for the colonists of Van Diemen's Land in terms of securing the continuation of transportation. The colonists however equated transportation with assignment, and cheap and plentiful labour, and this was not what the new probation system provided for, even if it did mean the continuation of transportation. In urging upon Russell the sentence of a period of probationary labour<sup>1088</sup> in gangs followed by an intermediate stage of probation in the settled districts, Montagu reconciled the supply of labour which had recently been taken from them by the discontinuance of assignment<sup>1089</sup>

<sup>1084</sup> Russell to Franklin, 30 June 1840, CO 280/118, p. 118. Copy sent to Gipps on the 6 July 1840 as reported in the British Parliamentary Minutes (Transportation), vol 6, Sessions 1810 - 1841, p. 781.

<sup>1085</sup> Franklin to Montagu, 13 October 1839, as reproduced in the Montagu Manuscript, p. 114.

<sup>1086</sup> *Ibid.*

<sup>1087</sup> *Ibid.*

<sup>1088</sup> Extract from the Minutes of the Executive Council, 29 March 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 42.

<sup>1089</sup> *Ibid.*, p. 42.



with the interrelated issues of finance, punishment, deterrence and reform.<sup>1090</sup> It also addressed Franklin's problem of how to gradually relax severity over time in the gangs by offering them employment in the districts. His proposal was more of evolutionary redirection in the system than a revolutionary change<sup>1091</sup>; while the basis of private assignment had been abandoned, the supply of labour was maintained, albeit after a necessary and satisfactory 'punishment' in the probation gangs.

Russell's despatch appeared to accord largely with Montagu's proposal of the previous October: writing to Franklin, Russell declared that

'I have received your dispatch No. 8 of 7 January last, with copies of a correspondence between Captain Maconochie and your Private Secretary and also between that officer and the governor of New South Wales, on the occasion of his being selected to fill the office of Superintendent of Convicts at Norfolk Island to which convicts may be transported from the United Kingdom from and after 1 August, the effect of which will be to reduce the colony of New South Wales from the list of such places. Her Majesty's Government have also decided, that no more convicts should be sent from the Australian colonies to Norfolk Island, as the government of New South Wales and King's Island within that of Van Diemen's Land would appear to be proper selection as places of confinement for prisoners convicted in those colonies, although on that point, I would leave (place provided it be not a settled district) to your discretion and the judgement of the Governor of N.S. Wales. There is no intention of adopting the proposal of Captain Maconochie for the separation of Tasman's Peninsula and of King's Island from Van Diemen's Land; but the utmost care should be taken in the selection of the officer appointed to superintend the convict establishment there. Convicts at Norfolk Island whose sentences are about to expire shall be immediately before the expiration of their terms of punishment be sent to Van Diemen's Land and that those who shall have received a ticket of leave may be subjected in Van Diemen's Land to such restraints as

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<sup>1090</sup> I agree with AGL Shaw, who wrote that Russell had 'spurned Montagu's advice about the employment of the men. This may have been interested, but at least it was informed'. See Shaw, *Convicts and the Colonies*, p. 277.

<sup>1091</sup> Ritchie, 'Unclean Thing', p. 164.

upon a further consideration of the system may be thought most useful. I have only further to make a few remarks which I would wish you to bear in mind in carrying out these measures.

1. That assignment, when once abolished, must in no shape be revived.
2. That of all systems of imprisonment, that which is called the separate system is the most efficacious and complete.
3. That where from various reasons, associated labour is adopted, it is not advisable to attempt by coercive means to enforce perpetuated silence. Such are never entirely successful, while they provoke and irritate the criminal; but silence during work, as a means of discipline, may be properly enjoined and enforced.

It is the intention of H.M. Government that Captain Maconochie's plan should be left to be tried by himself and that the experience of that trial should guide the further proceedings.<sup>1092</sup>

Franklin suspected that Montagu had formed a particularly close association with Russell, and had probably failed to disclose all of the governor's despatches on the subject of convict management; 'Some clue to this want of confidence', he wrote, 'was disclosed when the advice tendered by Montagu to the Secretary of State on the changes in contemplation in the convict system, appeared in some points to differ considerably from my own'.<sup>1093</sup> Unknown to Franklin, Montagu had actually supported Franklin's proposal for assigning men in the settled districts after punishment in the gangs, but Russell would have none of it, and Montagu did not try to persuade him otherwise. Lady Franklin held a similar suspicion:

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<sup>1092</sup> Russell to Franklin, 30 June 1840, CO 280/118, p. 118.

<sup>1093</sup> Franklin, *Narrative*, p. 12-13.

<sup>1094</sup> Lady Franklin to Mrs Simpkinson, 6 February 1841, MS 248/174/1-23.

'Mr Montagu has his own views of things to promote, and as these may not be identical with the tenor of some of Sir John's dispatches to Lord John Russell, he conceives it perhaps more according to propriety or etiquette to address the results of his efforts to Mr Forster, than to Sir John. More than all perhaps, Mr M's calculating, wary and selfish nature, sees no danger and some advantage in this mode of proceeding, more than I am able to do or even think of'.<sup>1094</sup>

Whatever the truth of this, Montagu's significant role in the establishment of the new system is clear; in November 1839, one month after he submitted his blueprint for the continuation of transportation to Van Diemen's Land, Russell informed his colleagues that 'the Colonial Secretary Mr Montagu who is now in this country may perhaps be able to assist you in [any] arrangements'.<sup>1095</sup> This was testament to Montagu's high standing in Downing Street and consolidated his authority to speak on such matters.

In any case, Franklin was easily reassured by his absent Colonial Secretary

'Now let me give you what Montagu has further told me respecting the proceedings at the Colonial Office with reference to this colony, and first I trust you will not think me too vain when I mention that he could assure me of the approval of my measures at the Colonial Office which had been repeatedly told him and he had also received the assurances of personal regard for me from several of the very leading men in the office'.<sup>1096</sup>

Of course, it was no surprise that Montagu knew exactly how to please Franklin - a flattering word and a little praise had always worked in the past.<sup>1097</sup> In August 1840, Russell sent a revised blueprint of the probation system to Montagu, who writing several days later remarked:

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<sup>1095</sup> Minute, 21 November 1839, Lord John Russell, CO 280/114, p. 416.

<sup>1096</sup> Franklin to Lady Franklin, 20 March 1841, as transcribed by G Mackaness, vol 1, p. 115. Maconochie commented on this also. See chapter 4.

<sup>1097</sup> Maconochie also observed that the government officers 'lavished' praise upon Franklin when it suited. See chapter 4.

'I beg to acknowledge your letter of the 8<sup>th</sup> instant, transmitting to me, by Lord John Russell's directions, the draft of a proposed instruction to the Lieut. Governor of Van Diemen's Land, with regard to the system of convict discipline to be adopted in that colony, upon which His Lordship has honoured me by requesting my observations or suggestions.'<sup>1098</sup>

In reply, Parliamentary Under Secretary at the Colonial Office, Vernon Smith, wrote:

'I have laid before Lord John Russell your letter of the 12<sup>th</sup> instant containing your observations on the draft of the instructions which His Lordship proposes to send to the Lieut. Governor of Van Diemen's Land in regards to the system of convict discipline to be adopted in that colony: and I am to acquaint you in reply, that His Lordship would be glad if you would state more in detail the plan of convict discipline you would propose.'<sup>1099</sup>

Montagu again wrote to Russell, submitting in more detail the plan of convict discipline which he proposed for the ticket of leave prisoners in Van Diemen's Land.<sup>1100</sup>

It was these very recommendations which were adopted by Russell in a second set of instructions transmitted to Franklin in September 1840.<sup>1101</sup> Franklin was requested to 'take immediate measures for the reception of a greater number of convicts at Tasman's Peninsula', as it has been decided to discontinue transportation to New South Wales. Information on a proposed ticket of leave system was also sent by Russell, in which the first stage of tickets of leave would keep the convicts in public employment making roads, clearing land, fencing, erecting buildings and generally improving Crown property for sale. First and second stage ticket of leave holders were required to lodge a certain percentage of their wage in the colonial savings bank until they reached the last stage of

<sup>1098</sup> Montagu to Smith, 12 August 1840, Leamington, CO 280/129, p. 330. This letter is also printed in full in *HRA*, I, XX, p. 809.

<sup>1099</sup> Smith to Montagu, 26 August 1840, CO 280/129, p. 337.

<sup>1100</sup> Montagu to Smith, 31 August 1840, London, CO 280/129, p. 339. This letter is also printed in full in *HRA*, I, XX, p. 811.

<sup>1101</sup> Russell to Franklin, 10 September 1840, as reported in the British Parliamentary Papers (Transportation), vol 6, Sessions 1810 - 41, p. 873. See chapter 7.

their employment.<sup>1102</sup> The system was based on the principle that convicts would serve an initial period of punishment in probationary gangs before receiving a ticket of leave which allowed them to receive wages for their labour while remaining in public employment. They were required to improve Crown lands for sale and labour on the public works, before becoming eligible for a different class of ticket of leave enabling them to choose their own service. The term 'ticket of leave' was later altered by Franklin, proving confusing for the convicts who had previously associated the term with conditional freedom.<sup>1103</sup> Russell also sent copies of Montagu's London correspondence to Franklin on the subject of ticket of leave prisoners<sup>1104</sup>, declaring that

'I transmit to you two letters of Captain Montagu on this subject; I concur in the proposals made by him except with regard to the first stage'.<sup>1105</sup>

Russell's statement is particularly important as it is evidence of the significant input Montagu was making to the debate. And less than twelve months later, the Chief Clerk, Gordon Gairdner, noted in a minute to Stanley that 'any number' of convicts could be sent to Van Diemen's Land, just as Montagu had done.<sup>1106</sup> Notably, there is no evidence that Russell forwarded a copy of Montagu's October probation proposal to Franklin, on which much of the new system was actually based.

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<sup>1102</sup> *Ibid.* The coalmines at Sloping Main on Tasman's Peninsula had already been established in 1833 (see A McMahon, 'The Convict Stations of Norfolk Bay', *Tasmanian Historical Research Association*, vol 13, (1966), p. 53). This was followed by the establishment in 1841 of a convict station at Saltwater River, some three miles from the coal mines (p. 61). Impression Bay, some five miles from Saltwater River, was hastily prepared in 1842 after Lord John Russell expressly stated that the 600 convicts transferred from Norfolk Island were to be sent to Tasman's Peninsula (p. 63). A station was also established at Cascades near Impression Bay in 1842 (p. 65). McMahon's article is an excellent commentary on the convict stations on Tasman's Peninsula. Russell's instructions also made changes to the Assignment Board established by Arthur. The Board had originally consisted of the Colonial Treasurer, the Chief Police Magistrate, the Principal Superintendent of Convicts, and a clerk. The Board was dissolved in June 1840, the Principal Superintendent of Convicts alone discharging its diminishing functions (Eldershaw, 'The Convict Department', p. 137 and p. 140).

<sup>1103</sup> Franklin to Russell, 15 April 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 43.

<sup>1104</sup> Russell to Franklin, 10 September 1840, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 873. The 12 August and 31 August 1840 letters from Montagu were included.

<sup>1105</sup> *Ibid.*, p. 874.

<sup>1106</sup> Shaw, *Convicts and the Colonies*, p. 278.

The omission of private assignment after employment in the gangs was a blow for Montagu, having encouraged Russell in his projected penal policy to increase the number of convicts sent to Van Diemen's Land to be punished in probation parties in the expectation that a second ticket of leave stage of punishment would be served in the settled districts at the disposal of the colonists. Instead, they were to remain in public employment, and receive wages for their labour, in improving generally the Crown lands for sale in the unsettled districts.<sup>1107</sup> In hindsight, Russell's decision, and Montagu's misrepresentation, undermined the success of the probation system from the very start and starved the colony of cheap and abundant labour in the settled districts when it needed it most.

A new system then of convict discipline was adopted, which was at least some kind of consolation for the large landowners in the colony who required an abundant labour supply in the unsettled districts.<sup>1108</sup> This was not the case however for the smaller farm holdings already established near the settled districts. The *Hobart Town Courier* welcomed Montagu's efforts in London, although it was unlikely that it appreciated the gravity of the decision to withhold the convicts from the settled districts:

'It was originally proposed by Lord John Russell that all prisoners whatsoever should be employed in the service of the Crown, and be favoured with the indulgence of a first class ticket of leave, which should entitle them to wages, to be paid by the government after a certain period of probation: but Captain Montagu knowing that the sudden withdrawal of so vast a portion of labour must in the absence of extensive emigration, materially affect the interests of the colonists, nor perhaps tend so much to the great object of Lord John Russell, which is the gradual habitation of the prisoner to freedom, as allowing him to be employed by the settler, contended strongly against this position'.<sup>1109</sup>

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<sup>1107</sup> Minutes of the Executive Council, 29 March 1841, as reported in the British Parliamentary Papers (Transportation), Sessions 1843 - 1847, vol 7, p. 42.

<sup>1108</sup> Thomas Archer's property near Longford for instance housed 45 people in 1842 - only 17 of whom were free! See Robson, *History*, p. 364. Similarly, Algernon Montagu employed an equal number of convicts on his eastern shore property at Rosny, which exceeded nearly 800 acres. See Howell, 'Of Ships and Sealing Wax', p. 118. Also, as stated in chapter 1, John Montagu employed 19 domestic servants before he returned to England, while Forster employed 16.

<sup>1109</sup> *Hobart Town Courier*, 23 March 1841.

The *Courier* was also jubilant that Montagu had secured the continuation of transportation to Van Diemen's Land, albeit in a new form:

'It was proposed to found another penal colony on the north of New Holland, but Captain Montagu succeeded in convincing the Secretary of State that the system of training which he mediated could be carried on with far better chance of success in Van Diemen's Land, and much more to the interests of the Crown and the colony, than in a newly formed penal settlement.'<sup>1110</sup>

Indeed, Lady Franklin was under no illusion that Montagu had highly recommended himself:

'There is doubt', she declared, 'that Mr Montagu made them believe that it was he that did everything in Van Diemen's Land'.<sup>1111</sup>

As always, Arthur, then in Canada, maintained an interest in his nephew-in-laws' situation, and suggested that the time had come for his protégé to look further afield. In a private letter, Arthur wrote:

'I can venture to say of you - that with one exception, you would do more work than all the public officers in this province put together - and I am quite satisfied that H.M. Govt. would find you one of the best men they could get to fill the office of Provincial Secy. for the United Provinces of Canada'.<sup>1112</sup>

This was no fleeting compliment: three months later, he again wrote to Montagu:

'I am anxious to let you know that a few days before the Govr. Genl. left Toronto I had a long conversation with him respecting the measures consequent upon the union of the

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<sup>1110</sup> *Ibid.*, 23 March 1841.

<sup>1111</sup> Lady Franklin to Mrs Simpkinson, 14 February 1843, MS 248/174/1-23.

<sup>1112</sup> Arthur to Montagu, 30 December 1839, *Canadian Papers*, p. 371.

provinces and as I heard that his Chief Secretary and himself were not on the most cordial terms, I took the opportunity of incidentally mentioning your name - observing how useful a person of your experience would be in settling all the departments - but without alluding to any particular office. The following day he renewed the subject and I then adverted to your despatch in business, you were at home on leave... He is very reserved - but it strikes me, as possible, if matters do not mend that I may hear further from him on the subject'.<sup>1113</sup>

In a post-script, Arthur warned Montagu that he must not discuss the matter with anybody:

'Nothing may come of this, and of course, you will not allude to the subject to any person - but it is exactly the post for you - salary £1500 a year'.<sup>1114</sup>

Montagu however was not the only one Arthur had tried to entice to Canada, which suggested he missed the strong and faithful party associations he had formed in Van Diemen's Land over the course of twelve years; writing to Hamilton two years earlier, he explained that

'I was beginning very anxiously to wish for you out with me - the Private Secretary's appt. turns out to be worth at least £1200 a year'.<sup>1115</sup>

In reply, Hamilton explained to Arthur that he had been tempted to join him:

'I have more than once regretted I did not accompany you this time last year; but as events have occurred, my services, which are of a peaceful and ordinary caste, would have availed you little, and it seems as if much time must elapse before the business of your civil government can fall into its usual routine'.<sup>1116</sup>

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<sup>1113</sup> Arthur to Montagu, 10 March 1840, *Canadian Papers*, p. 457.

<sup>1114</sup> *Ibid.*

<sup>1115</sup> Arthur to Hamilton, 31 October 1838, *Canadian Papers*, p. 338.

<sup>1116</sup> Hamilton to Arthur, 10 December 1838, *Canadian Papers*, p. 434.



Arthur also indicated to Montagu that their old enemy, Alfred Stephen, now a Judge in New South Wales having left Van Diemen's Land a short time after the Clapperton affair<sup>1117</sup>, was still aggrieved by the Arthur party. With tongue firmly in cheek, Arthur explained that Stephen had written to his brother George in support of another Van Diemen's Land colonist, Rowland Loane<sup>1118</sup>, who had returned to England in 1839 claiming that Arthur had a personal grievance against him. Arthur wrote:

'I must let you know that I have received a dispatch from Lord John Russell with a mass of extracts of papers transmitted to the Colonial Office by Sir Geo. Stephen in the case of Loane... This originates with your friend the Judge in New South Wales and he seems to have communicated to his cousin George all his own bad feelings... You will no doubt be, some way or another, mixed up with the affair, which has been your fate for some years past. What a plague Alfred Stephen has been to me'.<sup>1119</sup>

Arthur was right; "party politics" was still strong in Van Diemen's Land, and Montagu, by nature of his relationship with Arthur and the "party", inherited many of the long standing grievances against the government. Certainly, Arthur's supporters stood firmly by the new "party", and in March 1840, Thomas Archer<sup>1120</sup>, a member of the Legislative Council and large landowner, commented in a letter to Forster that:

'I am delighted to find that Sir George stands so high and deservedly so, with the home government - and have ever said that the ministry showed great judgement in selecting

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<sup>1117</sup> Stephen behaved little better towards Franklin than he did to Arthur, though his liberalism at least was something the new governor and Stephen shared. A year after his resignation, Stephen helped prepare a petition for the colonists of Van Diemen's Land requesting representative government, something dear to Franklin's heart (see Fitzpatrick, *Franklin*, p. 133).

<sup>1118</sup> Loane migrated to Van Diemen's Land in 1809, and became a successful merchant in Hobart town. In 1834, he fell into dispute with Arthur, and he returned to England in 1839. See *ADB*, vol 2, p. 121.

<sup>1119</sup> Arthur to Montagu, 14 February 1840, *Canadian Papers*, p. 415.

<sup>1120</sup> Born in England in 1790, Thomas Archer acquired a large land holding near Port Dalrymple, and later, a large property near Longford. Archer's brothers, Joseph and William, were also successful landowners in Tasmania. Unlike Joseph however, who fell into dispute with Arthur, Thomas Archer sided with the government, though he too later supported the abolition of transportation. See *ADB*, vol 1, p. 25.

him for such an arduous and important task - one that few would have been capable of performing... I wish him success with all my heart'.<sup>1121</sup>

Later, the *Colonial Times* noted with some sarcasm that the 'political education received by the Colonial Secretary was in Colonel Arthur's school, a clever but very unpopular ruler in this colony'.<sup>1122</sup>

Montagu had formed a strong friendship with another member of the "party", Captain Swanston<sup>1123</sup>, the manager of the Derwent Bank, and together, represented nearly £270,000 of mortgages, which extended their influence into half the houses in the colony.<sup>1124</sup> But Montagu was well aware that Swanston's influence depended upon the Colonial Secretary's patronage<sup>1125</sup>, and wasted no time in assuming the controlling authority of the Bank while in London.<sup>1126</sup> It came as no surprise to Franklin that Montagu returned to Van Diemen's Land with a large increase to his commissions for the Derwent Bank<sup>1127</sup>, and received the 'most marked expression of general appropriation and praise in his public and private character for having urged the British Government to

<sup>1121</sup> Thomas Archer to Forster, 5 March 1840, *Canadian Papers*, p. 451.

<sup>1122</sup> *Colonial Times*, 8 February 1842.

<sup>1123</sup> WH Hudspeth Papers, The Rise and Fall of Charles Swanston, Papers and Proceedings of the Royal Society of Tasmania, University of Tasmania, 5 October 1948, p. 1-16, RS 3/1(2). Swanston had been in the Army in India, where he held a Commission as Captain in a Regiment of Mounted Infantry in Madras, and for a time was Deputy Adjutant General of the Indian Army. He sailed to Van Diemen's Land while on leave from military duties, arriving in the colony aboard the *Success* on 4 June 1829. He evidently decided to stay in the colony, outlaying a considerable amount of capital (some £10,000). In 1832 Swanston was nominated a member of the Legislative Council, and in the same year was appointed managing director of the Derwent Bank, in which the supporters of the Government had a predominant interest. In addition to his banking activities he carried on an extensive business on his own account, as an import and export agent. The next ten years were witness to a gradual decline in the affairs of Swanston and the Derwent Bank, although at its zenith the Bank's capital exceeded £250,000, buoyed by a boom in pastoral properties and wool production. By 1842 however the price of wool had fallen, and values of land and stock dropped by almost half. Gross mismanagement of the Bank's investments in Port Phillip and the Kapunda Mine in South Australia all contributed to the misfortunes of the establishment. In 1846 the Bank's premises in Macquarie Street were sold, and in 1849 Swanston resigned as managing director, leaving the colony for America. Montagu was perhaps his closest friend, and their friendship lasted long after the Colonial Secretary had left the colony, leaving Swanston and others in charge of his financial interests.

<sup>1124</sup> *Ibid.*, p. 254.

<sup>1125</sup> According to West, the details of government were transacted in the offices of the Colonial Secretary and the Chief Police Magistrate. See West, *History*, p. 147.

<sup>1126</sup> See Fitzpatrick for an account of Swanston's dislike of Montagu's apparent independence (Fitzpatrick, *Franklin*, p. 256).

<sup>1127</sup> Franklin, *Narrative*, p. 13.

continue transportation to the colony'.<sup>1128</sup> There were others matters too, which occupied his attention, and these are discussed in Appendix E.

"Party politics" meanwhile were arriving at a further dimension in Van Diemen's Land. Franklin appointed Matthew Forster, the Chief Police Magistrate, to the office of Acting Colonial Secretary in Montagu's absence. Montagu had 'urgently recommended' Forster to Franklin, which Franklin assented to on a 'solemn assurance' from Montagu that he would return to the colony.<sup>1129</sup> The appointment was an immense disappointment for the Treasurer, John Gregory<sup>1130</sup>, who was still jealous of Montagu's promotion to the office of Colonial Secretary in 1834, and this was compounded by his exclusion from the Executive Council.<sup>1131</sup> Gilbert Robertson sided with Gregory, and declared in the *True Colonist* that

'we would have expected that Mr Gregory would have succeeded Captain Montagu, being next in official rank, and having been, ever since his arrival in the colony, the man of all work in the government... The putting of Captain Forster in this manner over his head is a poor recompense to Mr Gregory'.<sup>1132</sup>

<sup>1128</sup> WA Newman, *Memoir*, p. 17. Also see Fitzpatrick, *Franklin*, p. 251, for a commentary on the favourable comments he received from the press.

<sup>1129</sup> Franklin, *Narrative*, p. 12. Similarly, Montagu pressured Franklin into appointing Horne as Attorney General. It was well known that Horne, who was deeply in debt to the Derwent Bank, was one of the faction's supporters in the Legislative Council (Korobacz, *Legislative Council*, p. 154). Forster too was responsible for soliciting unfounded allegations against Gregson, who was a rival for Robert Kerr's seat in the Council. Kerr was the son of John Kerr, a friend of the faction and sometime Director of the Derwent Bank (p. 154). There were others: in arguing for the nomination of Roderic O' Connor, a large land owner who had profited from his close association with Arthur, Montagu contended that it was necessary for Franklin to appoint non-officials who were sympathetic to the present government in order to ensure the official member's political safety after the governor left the colony. On this occasion however, Franklin refused to appoint Montagu's nominee (p. 155). In England too, Montagu recommended to Russell that the Sheriff replace the outgoing Archdeacon in the colony's Legislative Council, or if he was not suitable, he proposed the appointment of the Colonial Auditor (Montagu to Russell, 17 January 1840, CO 280/129, p. 315).

<sup>1130</sup> Fitzpatrick, *Franklin*, p. 208 for a full commentary of the Gregory - Franklin incident. Gregory was finally suspended in 1840 after he became 'impossible to work with'. See also Korobacz, *Legislative Council*, pp. 148-51.

<sup>1131</sup> Franklin stated that the appointment alienated from him the zealous and able services of another officer of the government. Franklin was referring to Gregory (see Franklin, *Narrative*, p. 12). In defence of the appointment however, Franklin declared that he preferred Forster because he carried the 'most weight and influence with members of the Legislative Council', and that his knowledge of the convict system would be invaluable in the changeover from assignment to probation (see Korobacz, *Legislative Council*, p. 149).

<sup>1132</sup> *True Colonist*, 28 December 1838, as quoted in Fitzpatrick, *Franklin*, p. 208.

Franklin recorded in his diary<sup>1133</sup> that Forster and Chief Justice Pedder considered Gregory's recent association with two distillers<sup>1134</sup>, who supported the defeat of the Feigned Issues Bill<sup>1135</sup>, as most improper and unbecoming of a high ranking official. Lord John Russell concurred; 'You are at liberty', he told Franklin, 'to remove Mr Gregory should you judge it necessary'.<sup>1136</sup> Russell also reserved some criticism for the governor himself, charging him with mishandling the Gregory episode from the very beginning.<sup>1137</sup>

Writing to Montagu in December 1839 however, Arthur thought that Franklin should not concern himself too much with the reprimand, and that he too had been troubled by the Treasurer. He wrote of Gregory:

'It must surely have been to show that his charity extend to the very worst of his fellow creatures. He inflicted upon me, however, by philanthropy [sic] an immensity of anxiety and trouble - and although I knew I was right, I was at one time, soon after my arrival in London, afraid that both these cases would have gone against me. Still, I believe, Gregory acted from a good motive, and that is much more than I can say of every action of my own life... In the end, Sir John Franklin will thank him for it. It does a Governor good to feel the curb a little, for the evil spirit gives every man in power spur enough'.<sup>1138</sup>

<sup>1133</sup> Sir John Franklin's Diary, 7 May 1840, as quoted in Korabacz, Legislative Council, p. 149.

<sup>1134</sup> Forster had in fact expressed the view that the less amount spent on compensation, the better the position of the government would be to deal with its financial problems. He moved a series of resolutions which formed the basis of the Feigned Issues Bill and which cut down on the number of distillers eligible for compensation (Korabacz, Legislative Council, p. 188). It is hardly surprising that Forster took this tone against Gregory.

<sup>1135</sup> Gregory had spoken out against several bills in the Legislative Council after the Colonial Office asked him to resign from the Executive Council on account of a clerk's error. Suspecting Franklin was at fault, Gregory felt not in the least obliged to remain silent as he had done during Arthur's term of government. The Feigned Issues Bill, which intended to reduce the number of distillers eligible for compensation after the industry was prohibited by Franklin, was defeated in the Council after Gregory, an official member, voted against it (Korabacz, Legislative Council, p. 152).

<sup>1136</sup> Russell to Franklin, 13 March 1840, as quoted in Korabacz, Legislative Council, p. 152.

<sup>1137</sup> Korabacz, Legislative Council, p. 152.

<sup>1138</sup> Arthur to Montagu, 30 December 1839, *Canadian Papers*, p. 370.

Gregory was indeed a thorn in the side of the government, and according to Lady Franklin, formed a 'close union' with Maconochie and Stephen, uniting against Montagu and the rest of the government through their close association with the *Tasmania* newspaper.<sup>1139</sup>

Montagu transmitted the results of his discussions at the Colonial Office to Forster, from whom Franklin derived only a 'meagre portion of information on subjects immediately affecting the interests of the colony.'<sup>1140</sup> Indeed, Forster revelled in his new posting, and could hardly wait to tell Arthur of his promotion. In a private minute to Montagu, he wrote: 'I wish you would let Sir Geo. Arthur see this [of Franklin's authorisation] - I do not write to him by this ship because we hear and I incline to believe that he had returned home'.<sup>1141</sup>

Lady Franklin also recorded that

'Mr Montagu displeases Sir John by the letters he sends him from England - they are the driest and stupidest epistles possible, containing no important news whatever, whilst all that most intimately affects the colony and therefore Sir John he discloses alone to Mr Forster from whom Sir John obtains it only second hand. With such reservations as Mr F. thinks proper to make - sometimes the greater part of a letter is read to him, sometimes only some slight communications is made, this is not as it should be. I can only account for it in two ways - in the first place, Sir John may not have asked him to be communicative and confidential - in the second place, his news is not authoritative and

<sup>1139</sup> Lady Franklin to Mrs Simpkinson, 13 February 1839, MS 248/174/1-23.

<sup>1140</sup> Franklin, *Narrative*, p. 12. Lady Franklin also commented on the communications between Montagu and Forster (Lady Franklin to Mrs Simpkinson, 6 February, MS 248/174/1-23). Franklin later stated that Montagu justified transmitting information to him on the grounds that he thought the governor was unwell and was unfit to receive any communications (see Franklin, *Narrative*, p. 13). Franklin was well aware of their communication: 'Forster tells me that he has written very fully to you about the general state of affairs which you will rejoice to hear are going on in the most satisfactory manner. I shall not therefore write on those points but will only assure you that Forster is considered to be doing his duties very well, by every one, and on my tour I did not hear one single objection to his appointment (Franklin to Montagu, 15 April 1839, Montagu Manuscript, p. 119).

<sup>1141</sup> Forster to Montagu, 20 June 1840, Canadian Papers, p. 82. Montagu received the papers on 14 November 1840 at Southampton.

official and therefore not fit perhaps to be promulgated, but surely Mr M must conclude that Sir J - as Governor, must possess common discretion in such a case'.<sup>1142</sup>

Ironically, Lady Franklin recorded that Mrs Montagu wrote to her often, and was 'much pleased and obliged'<sup>1143</sup> with the information from home.

If Franklin was displeased with Montagu however, he did his best not to show it. In a letter to Montagu, he explained

'If I had not known that Forster was careful not to miss any opportunity of writing to you that he kept you *au fait* of whatever is passing I certainly should not have proved so bad a correspondent nor have allowed one vessel to sail without its conveying a letter from me'.

Franklin's inability to censure his subordinates was evidence of his indecisiveness and later showed in his misreporting about the success of the probation system.

Montagu too received regular insights into the colony's affairs from Forster, and took a particular interest from afar into Franklin's push for representative government and liberal endowment in the colony.<sup>1144</sup> Lady Franklin even suggested that 'Forster had written home to his correspondent Colonel Fox, through whom his letters relating to the colony are shewn to Lord Normanby, on whom they have more influence'.<sup>1145</sup>

Despite his own admissions, Franklin was a prolific correspondent, and wrote a number of private letters to Montagu in London. Franklin appeared somewhat distressed by the absence of his Colonial Secretary, though it was obvious that Montagu was of more value to the colony in London at that particular time:

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<sup>1142</sup> Lady Franklin to Mrs Simpkinson, 6 February 1841, MS 248/174/1-23.

<sup>1143</sup> Lady Franklin to Mrs Simpkinson, 26 December 1839, MS 248/174/1-23.

<sup>1144</sup> Franklin acknowledged that Forster placed Montagu in possession of many opinions expressed in the colony (see Franklin, *Narrative*, p. 7). Forster was also in regular contact with Arthur. See Arthur to Montagu, 4 July 1839, *Canadian Papers*, p. 188.

<sup>1145</sup> Lady Franklin to Mrs Simpkinson, 6 February 1841, MS 248/174/1-23.

'Since we have heard of the changes in the colonial departments we have the more rejoiced at your being in England, knowing that you are the most qualified person to furnish full information to the authorities in Downing Street, on all the subjects bearing upon the complicated questions connected with the Australian colonies and particularly with whatever concerns the interest and welfare of this island.'<sup>1146</sup>

This was repeated later:

'Every day experience convinces me the more, of the benefit I must derive, as well as the colony, from your being in England... in connection with the continuance of transportation.'<sup>1147</sup>

It was not long however before rumours reached Franklin that Montagu might not even return to Van Diemen's Land; in June 1840, Franklin wrote:

'Mr Pitcairn mentioned to me yesterday that you are not to return and that you are to have some office in London: he expressed a very sincere regret that we were not to have you again in the colony, although he agreed with me in the remark that you will still be of very great help to it at home'.<sup>1148</sup>

Not that Franklin was all that concerned; on 18 June 1840, Franklin accepted that Montagu might not return, and sent a report home recommending that Forster succeed his brother-in-law in the office of Colonial Secretary if the need arose.

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<sup>1146</sup>Franklin to Montagu, 10 July 1839, Montagu Manuscript, p. 111.

<sup>1147</sup>Franklin to Montagu, 30 September 1840, Montagu Manuscript, p. 112.

<sup>1148</sup>Franklin to Montagu, 22 June 1840, Montagu Manuscript, p. 114. See also chapter 9 for a discussion of Pitcairn. Franklin later wrote that 'those who knew Mr Montagu best were aware before he left Van Diemen's Land that he never intended to return unless he failed in other objects of ambition which occupied his thoughts and efforts during his residence in England'. See Franklin, *Narrative*, p. 12.

Robert Pitcairn<sup>1149</sup>, a colonial solicitor, was right in one respect; Montagu had directed his energy into establishing the probation system of convict discipline, in place of the assignment system, which had already been abolished by the home government. It was generally believed that he did not intend to return to Van Diemen's Land, but the new system was a controversial experiment upon a large and expensive scale, and it therefore became a matter of vast importance to administer it effectively. It is hardly surprising then that when Montagu made application for an extension of 18 months to his leave in February 1840<sup>1150</sup>, the Colonial Office replied six days later with a definitive no:

'His Lordship regrets it is not in his power to accede to your application for an extension of the period of the leave of absence'.<sup>1151</sup>

Not to be outdone however, and perhaps sensing he was entitled to some recompense, Montagu again wrote to the Colonial Office in March seeking a further extension of three months:

'I again request you to bring the subject again under His Lordship's consideration. I trust I may be excused for observing that your letter occasioned me very great distress... It would not perhaps, be proper in me to recite domestic circumstances for the sake of bringing my application before Lord John Russell's consultation, but if it were in my power to do so I feel persuaded His Lordship would admit their force and urgency. It will, I trust, be sufficient for me to assure His Lordship that to oblige me to leave this country at this time now required, would be destructive of the most important interests of those who are nearest and direct to me, and be more painful to their, and my feelings, than I could possibly prescribe.'<sup>1152</sup>

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<sup>1149</sup> Born in 1802, Pitcairn arrived in the colony in September 1824. He was a successful solicitor, and became active in the cause for the cessation of transportation. He built the fine home Runnymede in Newtown, which he later sold to Bishop Nixon. He died in 1861.

<sup>1150</sup> Montagu to Vernon Smith, 12 February 1840, CO 280/499, p. 317.

<sup>1151</sup> Vernon Smith to Montagu, 18 February 1840, CO 280/499, p. 318.

<sup>1152</sup> Montagu to Vernon Smith, 2 March 1840, CO 280/499, p. 320.



Montagu's request was again forwarded to Russell, who after reconsidering the application, permitted the Colonial Secretary to remain in England for a further three months only. His instructions however were very clear; Montagu was to return to Van Diemen's Land as soon as possible after the expiry of that period.

At the same time, Arthur wrote to the Under Secretary of State at the Colonial Office, James Stephen, thanking him for the kindness he shown towards his nephew-in-law. Indeed, Arthur's patronage had never been so evident:

'Although you have, as I know from sad experience, registered a resolution never to correspond with Administrators of Govts. - a very wise resolution, I doubt not, in every instance except as it effects myself - yet you cannot avoid recg. a letter - and as I have just heard from my friend Mr Montagu that you have been very kind to him and tried to secure for him an appointment at the Emigration Board, I cannot resist thanking you, as I do most sincerely, although I am aware it has proved a failure. I regret the result not only because Mr Montagu wished to remain in England, but on account of the public service for I verily believe you have not, through the whole range of office men, a more competent person for such a board. If any future opportunity offers, I can answer for it you will find him a most valuable functionary.'<sup>1153</sup>

Arthur's comments are evidence that Montagu had expressed an interest in finding employment closer to England. It is arguable that whilst Montagu was strenuously concerned to satisfy political opinion whilst in Britain, he really had not anticipated having to actually oversee the new system in practice when the changes were first proposed.

Arthur comments as to the Colonial Secretary's 'politics' were also revealing:

'As to his politics, although he acted officially with me for twelve years, and is a near connection of mine, I know no more about them than you do; but I believe he proceeds

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<sup>1153</sup> Arthur to James Stephen, 16 April 1840, *Canadian Papers*, p. 37.

upon the same principles to wh. I have steadily adhered for twenty years - to serve faithfully the government; to act upon no exclusive principle in any matter, civil or religious; and to enlist under no political standard whether it be - Tory - Whig - Conservative - Reform or Radical. Such a course of proceeding wd. never answer for professed politicians, who must display their colours, but, having served under a dozen Secretaries of State, I am well assured it is the only safe and honourable line, under all ordinary circumstances, for military men employed in my occupation'.<sup>1154</sup>

As always, Lady Franklin added her own theory, declaring that Montagu probably hoped to find a 'snug place to keep him at home'<sup>1155</sup>, recording that he had earlier directed Forster not to build an additional wing to his house.

Noting Montagu's vast accession of claims to political importance derived from his boosted intimacy with the officers of the Colonial Office in Downing Street, historian Lloyd Robson observes that officials like Montagu were akin to 'large frogs in small pool' in Van Diemen's Land, and 'their sense of importance went to their heads and charged their cunning minds with a sort of nervous tension'.<sup>1156</sup> In fact, Montagu later claimed to have laid the ground work for the new system<sup>1157</sup>, and prepared to return to the sphere of his former influence charged with the responsibility of ensuring that its instructions were properly understood, and duly carried out.<sup>1158</sup> In any case, Arthur offered some significant advice for Montagu:

'I do believe that any man with a good head upon his shoulders can do far better for his family in the Colonies than in England'.<sup>1159</sup>

Montagu spent the rest of his absence travelling and visiting Mrs Montagu's relations in England. Montagu wrote that his eldest boy had entered Balliol College, Oxford, and

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<sup>1154</sup> *Ibid.*

<sup>1155</sup> Lady Franklin to Mrs Simpkinson, 22 May 1840, MS 248/174/1-23.

<sup>1156</sup> Robson, *History*, p. 199.

<sup>1157</sup> See chapter 7.

<sup>1158</sup> See chapter 7, for Montagu's claim that he devised the system.

<sup>1159</sup> Arthur to Montagu, 14 August 1840, *Canadian Papers*, p. 106.

was to be educated for the Church, this being, Montagu added, 'his own choice'. He also spent time with Arthur's children who were to be educated in England, much to the pleasure of his old governor.<sup>1160</sup> Montagu anticipated embarking for the colony in October or November 1840 so as to arrive at Hobart Town in February 1841. 'The cold', he recorded, 'has not been great yet, but I feel it very much, and shall have no objection to be removed from it again, which I shall be before next winter.' Later, Lady Franklin was so bold as to suggest the 'climate in Van Diemen's Land was so attractive that no temperament, even the coldest, could resist. That is of course', she continued, 'unless it be Mr Montagu!'<sup>1161</sup>

Prior to embarking for Van Diemen's Land on 28 October 1840, Montagu was questioned by the Colonial Office after the Admiralty raised concerns about the quantity of luggage in his possession. In a minute to Vernon Smith, Russell wrote:

'Seven tons of baggage would seem a very great allowance for a single family, especially if the articles are of that weight that are separately light... my impression is that Mr Montagu should be desired to state not merely the weight but the content of the packages!'<sup>1162</sup>

In any case, Montagu boarded the *Lady Raffles* with his wife and two servants, one month and six days after his instructed day of departure.<sup>1163</sup> He returned to Van Diemen's Land having gained the British Government's acquiescence that the colony could absorb 'any' number of convicts, and an ongoing commitment from the colonial government to full scale transportation; seven years later, Charles Joseph Latrobe, acting governor of Van Diemen's Land, was to describe the probation system as 'a fatal experiment as far as

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<sup>1160</sup> Arthur to Montagu, 7 April 1840, *Canadian Papers*, p. 8.

<sup>1161</sup> Lady Franklin to Mrs Simpkinson, 6 November 1841, MS 248/174/1-23. Lady Franklin also mentioned during a tour of Port Arthur in 1837 that Montagu 'was afraid to go out in the wet' because he suffered from sore feet (Lady Franklin's Journal, 25 March 1837, MS 248/156).

<sup>1162</sup> Vernon Smith to Montagu, 16 September 1840, CO 280/498, p. 22.

<sup>1163</sup> Montagu was meant to return to Van Diemen's Land on the 16 September 1840 aboard the *Navarino* embarking from Deptford.

it has proceeded, and the sooner it is put an end to the better, for the credit of the nation and humanity'.<sup>1164</sup>

As Montagu's ship sailed for Van Diemen's Land across the Indian Ocean, Arthur was preparing to embark once more for England. He had grown weary of his Canadian posting, confiding in Montagu that

'I can scarcely describe to you my dr. Montagu how much I am overworked - and my private letters can be scarcely intelligible'.<sup>1165</sup>

Earlier, he had also explained that

'I am suffering so much from pain in my arm that I have dictated this to Isabella'.<sup>1166</sup>

The course of a year had also exposed the political maturity of Montagu to Arthur; just as he himself had done several months beforehand, Arthur now asked Montagu to speak with Sir James Stephen on his behalf:

'I mentioned in my last letter that, if it so happened that a conversation with Mr J. Stephen shd. lead to it I shd be glad you wd. hint at my wish for the Ionian Islands'.<sup>1167</sup>

Arthur explained to Montagu that he fully expected to leave Upper Canada 'in a very different state from that in which I found it, the contrast', he professed, 'will I think, be striking to H.M Govt'.<sup>1168</sup> And most gratifying, he declared

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<sup>1164</sup> La Trobe to Gladstone, as reproduced in Brand, 'Charles Joseph La Trobe and the Van Diemen's Land Probation System', p. 63.

<sup>1165</sup> Arthur to Montagu, 7 April 1840, *Canadian Papers*, p. 9.

<sup>1166</sup> Arthur to Montagu, 14 August 1840, *Canadian Papers*, p. 107. Arthur's wife's name is Elizabeth, and it is unclear why he refers to her as Isabella, if that is indeed who he means.

<sup>1167</sup> *Ibid.*, p. 107.

<sup>1168</sup> Arthur to Montagu, 25 October 1840, *Canadian Papers*, p. 162.

'not a single complaint has been made against my administration throughout its whole course. No Bryans, no R. Loanes nor Gilbert Robertsons to challenge me when I arrive in Downing Street'.<sup>1169</sup>

For Montagu however such complaints were disturbing possibilities; Bryan's brother was still a prisoner at Port Arthur; Loane too was preparing to return to Van Diemen's Land; and Robertson, who had only recently emerged from gaol himself, was sharpening his pencil for a new war of words with Arthur's protégé.

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<sup>1169</sup> *Ibid.*, p. 162.